

Egg Industry Stabilization Bill

NOTES ON CLAUSES

Clause 1 contains the citation.

Clause 2 provides for commencement on Royal Assent.

Clause 3 sets out the interpretations. Most of the interpretations are the same as in the *Egg Industry Stabilization Act 1973*. Where there is any significant variation, it is discussed in the notes relating to the Clause in which the term is used. Sub-clauses (2) to (5) are procedural and are similar to the 1973 Act.

Clause 4 (1) creates a general exemption for any person who does not keep more than 20 hens or 20 pullets.

Sub-clause (2) allows the Governor in Council to exempt any poultry farm owned by the Crown or a statutory body or an educational institution. This is the same as the 1973 Act. This sub-clause has been extended to allow the Governor in Council to exempt any community project involving the keeping of not more than 100 hens. The aim is to allow exemptions to be granted for places where some type of community project is being carried out, such as the rehabilitation of drug addicts or the provision of work experience for young unemployed people.

Sub-clauses (3) to (7) are procedural.

Clause 5 establishes the Poultry Farmer Licensing Committee. The members of the Licensing Committee are also the persons for the time being holding office as members of the Victorian Egg Marketing Board.

Sub-clauses (3), (4) and (5) contain the same provisions as Sections 6 (2), 5 (4) and 5 (5) of the 1973 Act.

Clause 6 sets out the functions of the Licensing Committee. Sub-clause (1) is the same as Section 5 (6) of the 1973 Act, and sub-clause (2) is the same as Section 6 (10) of the 1973 Act.

Clause 7 provides that the members of the Licensing Committee are to receive such remuneration and travelling and other allowances as the Governor in Council determines. This is similar to Section 5 (3) of the 1973 Act.

Clause 8 contains provisions regarding quorums and the conduct of meetings and is the same in substance as the 1973 Act.

Clause 9 allows the Licensing Committee to make use of officers of the Victorian Egg Marketing Board for administrative purposes, and also provides that the Licensing Committee may appoint a secretary from amongst the officers of the Board. These provisions are the same as Sections 5 (7) and 5 (8) of the 1973 Act.

Clause 10 deals with the dissolution of the Licensing Committee. Since the members of the Licensing Committee are also the members of the Victorian Egg Marketing Board, and since the *Marketing of Primary Products Act 1958* provides for the dissolution of the relevant marketing board if a poll of producers votes in favour of that course of action, this Clause contains provisions that require the Licensing Committee to be wound up if the Victorian Egg Marketing Board has to be dissolved following a poll of producers. The provisions in this Clause are the same as the provisions in Section 7 of the 1973 Act.

Clause 11 allows the Licensing Committee to authorize officers of the Victorian Egg Marketing Board to be inspectors for the purposes of this Bill. This is the same as Section 8 of the 1973 Act.

Clause 12 sets out the powers of inspectors and is similar to Section 9 of the 1973 Act, except that the powers of entry are extended to include places used for the raising of pullets.

Clause 13 authorizes inspectors to ask for the name and address of any person suspected of committing an offence against the legislation. This is the same as Section 10 of the 1973 Act.

Clause 14 makes it an offence to impersonate an inspector and is the same as Section 11 of the 1973 Act.

Clause 15 (1) makes it an offence (subject to the exemptions elsewhere in the Bill) to keep hens without holding a licence or a permit. Sub-clauses (2) and (3) extend this principle by making it an offence to keep hens otherwise than in accordance with the conditions of the licence or the permit, or to keep them at a place other than a place named in the licence or the permit.

Clause 16 provides that the Licensing Committee is not to issue a licence to any person other than a natural person. There are transitional provisions later in the Bill requiring existing licences that have been issued to companies, partnerships or trusts to be surrendered and re-issued to natural persons.

Clause 17 sets out the procedure for applying for a licence in the case of a person who does not already hold a licence.

Clause 18 sets out similar procedures that apply in the case of a person who already holds a licence.

Sub-clause (2) allows the Licensing Committee to fix a day as the last day by which applications for licences for the ensuing licensing period must be lodged. Sub-clause (3) provides that the Licensing Committee is not to receive applications after that day. These provisions are the same as Sections 13 (6) and 13 (7) of the 1973 Act.

Clause 19 provides for licences issued to the Crown, statutory bodies and educational institutions to be issued in the name of a nominee.

Clause 20 (1) provides that a licence is not to be issued to any person unless he is a *bona fide* poultry farmer. Sub-clause (2) takes account of persons who are not *bona fide* poultry farmers who wish to enter the industry. Sub-clause (3) provides that licences are not to be issued if the quota would exceed 10 000 (or such other amount as a person is authorized to have in accordance with other provisions of the Bill), or if the total amount of quota at any one place would exceed 40 000 (or such other amount as is authorized elsewhere in the Bill).

Clause 21 (1) provides that each licence is to specify the place or places to which it relates and also requires that each licence is to include a condition that the licensee will not keep more than the specified number of hens at that place. Sub-clause (2) provides that where more than one licence is issued in respect of the same place, each licensee is deemed to be keeping the number of hens calculated *pro rata* according to his quota. The aim is to ensure that if over-quota hens are kept at a farm where there is more than one licence, no licensee can disclaim responsibility for the excess hens.

Clause 22 provides that licences are to continue in force until the end of the licensing period, unless cancelled or surrendered. This is the same as Section 14 (8) of the 1973 Act.

Clause 23 sets out the circumstances under which the Licensing Committee may cancel a licence. The provisions are substantially the same as those set out in Section 17 (1) of the 1973 Act. Sub-clause (2) provides that, where a licence is cancelled, the hen quota is forfeited and the Issued Quota (discussed in the notes on Clause 26) is reduced accordingly. Sub-clause (3) allows the Licensing Committee to reduce the licensee's hen quota instead of cancelling the licence and this is similar to Section 17 (2) of the 1973 Act.

Sub-clause (4) provides that cancellation of the licence or the reduction of a hen quota is to remain in abeyance until the appeal period is expired or, where an appeal is lodged, until the appeal is determined.

Clause 24 allows twelve month's grace (or until the granting of probate or the administration of the estate) during which the executor, administrator or beneficiary of a deceased estate may operate a poultry farm. The aim of this Clause is to allow a period of grace during which arrangements can be made to dispose of the quota or the poultry farm or take up the business of the farm.

Clause 25 relates to the State Hen Quota. This is the number determined by the Governor in Council from time to time. This provision is substantially the same as Section 21 of the 1973 Act.

Clause 26 relates to the Issued Quota. This is the amount of quota determined by the Licensing Committee within the State Hen Quota. The aim is to allow the Licensing Committee the flexibility of increasing or decreasing the Issued Quota (within the State Quota) as a means of controlling production.

Clause 27 provides that where there is a reduction in Issued Quota, all of the relevant quota of each licensee is to be reduced by the same percentage. Reductions in Issued Quota do not apply to the first 1000 hens. Where a licensee holds quota both inside and outside the area specified in Schedule One, his quota is to be reduced by an equal percentage in each area.

Clause 28 provides that where there is an increase in the Issued Quota following a decrease in the previous year, the increase is to be restored *pro rata* to those licensees who forfeited quota in the preceding twelve months, except that where a licensee has sold his hen quota or part of it in the interim, that portion of the increase is to be sold by tender in accordance with Part VII of the Bill.

If the amount of the increase in the Issued Quota exceeds the decrease in the preceding twelve months, the excess is to be sold by tender in accordance with Part VII. Where there has been no decrease in Issued Quota for twelve months prior to an increase, the whole of the increase is to be sold by tender.

Clause 29 provides that where hen quotas are varied, the Licensing Committee is to notify each licensee. Where the hen quota is increased the increase is to take effect from the day specified in the notice and where the hen quota is to be reduced, 90 days notice is to be given of the reduction.

Clause 30 allows the Licensing Committee to make seasonal reductions in the number of hens kept by licensees. The hen quota of all licensees is to be reduced by the same percentage, subject to an exemption of 2000. Where more than one licence is issued in respect of the same place, the exemption of 2000 is to be shared equally between the licensees operating at that place. Where the same licensee keeps hens at more than one place, the amount of his hen quota which is exempt under these provisions is to apply in respect of only one place.

Sub-clause (7) requires the Licensing Committee to notify licensees of any seasonal reduction in their quota.

Clause 31 introduces a refinement of the principle of seasonal reductions in quota. Under this Clause, the Licensing Committee may, if it thinks fit, allow a licensee to keep a greater number of hens for a shorter period (as long as this is offset by a period during which he keeps a lesser number of hens) so that the total number of hen-days is not greater than it would have been under the previously authorized seasonal reduction. The aim is to give poultry farmers some flexibility in flock management, as long as their number of hen-days does not exceed the authorized level.

Clause 32 re-states the principle (introduced by the *Egg Industry Stabilization (Amendment) Act* 1982) that the maximum quota that can be held by any person is 10 000 (subject to existing entitlements, which are dealt with later in the Bill).

Clause 33 provides that hen quota is not to be allocated in respect of any one place if the total amount of hen quota at that place would exceed 40 000, except in the case of farms where there is currently a quota in excess of 40 000.

Clause 34 sets out the situation that applies to the sale of quota when sold with a poultry farm as a going concern.

Where the quota is 40 000 or less, the provisions of *Clause 32* are applicable, i.e., no person is to obtain quota so as to hold more than 10 000.

Where quota in respect of the poultry farm is more than 40 000, the sale of the farm may proceed—

- (a) if, after reduction of the quota in excess of 40 000 by one-eighth each time the first day of July falls between 16 November 1983 and completion of the sale, there will be sufficient purchasers to ensure that quota can be allocated so that no buyer will hold more than 10 000; or
- (b) if, after reduction of the quota in excess of 40 000 by one-fifth each time the first day of July falls between 16 November 1983 and completion of the sale, there are not enough purchasers to ensure that quota can be allocated without exceeding the limit of 10 000, the sale may proceed nevertheless providing there are not less than four purchasers, none of whom holds any quota immediately prior to the sale.

It should be noted that the above provisions relating to the reduction of quota in excess of 40 000 will only apply where the farm and the quota are sold together as a going concern. Established poultry farmers with quota in excess of 40 000 may continue the poultry farming operation without any reduction of quota in accordance with this *Clause*, until such time as the farm or the quota is sold. Any quota that is not sold to a purchaser with the farm may be sold through the tender system (discussed in the notes on *Clauses 45 to 47*).

Clause 35 establishes the Poultry Farmer Licensing Review Committee, which is an appeals body established to review certain decisions of the Licensing Committee. The provisions of this *Clause* are substantially the same as *Sections 26 (1), 26 (5) and 26 (9)* of the 1973 Act.

Clause 36 sets out the functions of the Review Committee.

Clause 37 provides that each member of the Review Committee is to receive such remuneration and travelling and other allowances as the Governor in Council from time to time determines.

Clause 38 deals with the conduct of meetings and the number of members required to form a quorum and is similar to *Section 27* of the 1973 Act.

Clause 39 deals with vacancies. The provisions are similar to those in *Section 26* of the 1973 Act, although the sub-sections are arranged in a different order.

Clause 40 deals with the dissolution of the Review Committee and is substantially the same as *Section 25* of the 1973 Act.

Clause 41 deals with the appointment of a secretary for the Review Committee and the use of the services of any officer or employee of the Public Service. These provisions are the same as *Section 26 (7)* and *Section 28* of the 1973 Act.

Clause 42 provides that members of the Review Committee are not to demand gratuities, and no person is to offer a gratuity to a member of the Review Committee. These provisions are the same as *Section 30* of the 1973 Act.

Clause 43 sets out the procedure to be followed by the Licensing Committee in the cancellation and re-issue of licences, in order to take account of the sale of farms or quota under various circumstances. Sub-clause (1) is the same as *Section 35 (1)* of the 1973 Act. Sub-clauses (2) and (3) insert additional provisions relating to the purchase and sale of quota.

Sub-clause (4) provides that a licence is not to be issued unless the transferee is a natural person and a *bona fide* poultry farmer. "*Bona fide* poultry farmer" is defined in Clause 3 of the Bill as a person who is normally present at a poultry farm to carry out or supervise the day to day operation of a poultry farm.

Sub-clause (5) takes account of the situation of a person entering the industry and who is not therefore, at the time of his application, a *bona fide* poultry farmer.

Sub-clause (6) ensures that the provisions of Division 1 of Part IV (issue of licences) apply to transfers and purchases of quota in the same way as they apply to new applications.

Sub-clause (7) provides that applications for the transfer of hen quota may only be made in multiples of 500. This provision is the same as Section 35 (3) of the 1973 Act.

Sub-clause (8) prevents the transfer of quota from a farm outside the area in Schedule One (the "Prescribed Area") to a place inside that area, or to the extent that such an approval would increase a person's quota to more than 10 000. These provisions are the same as Section 35 (4) of the 1973 Act.

Sub-clause (9) sets out an exemption on the transfer of quota into the Prescribed Area where the quota is sold through the quota pooling system. This is necessary because the quota will be pooled and sold by tender.

Sub-clause (10) allows the Licensing Committee to refuse an application for transfer where the prospective transferee has been convicted of an offence against the Act. This is basically the same as Section 35 (5) of the 1973 Act.

Clause 44 is procedural.

Clause 45 provides that a person may not sell hen quota unless it is sold with the farm as a going concern or sold by tender in accordance with Part VII.

Clause 46 provides that a person who wishes to sell his hen quota separately from the farm is to apply to the Licensing Committee to arrange the sale by tender.

Clause 47 requires the Licensing Committee to arrange for the sale of quota by tender in accordance with the regulations, and requires the Licensing Committee to establish and conduct a system of pooling quota for sale by tender.

Sub-clause (3) provides that where the Licensing Committee sells quota otherwise than on the application of a vendor, the proceeds of the sale are to be paid into the Consolidated Fund. Sub-clause (4) provides that, where quota is sold on the application of a person pursuant to Clause 46, the proceeds are to be paid to that person or at his direction.

Clause 48 relates to the issue of permits to keep hens for special purposes. The aim is to allow the keeping of hens for purposes other than producing eggs for human consumption. This Clause is similar to Section 38 of the 1973 Act, but it has been extended to take account of layer-breeder hens and hens of any identifiable pure breed that are kept for exhibition purposes.

Clause 49 sets out the circumstances under which a person may appeal against a decision of the Licensing Committee. These provisions are substantially the same as Section 39 of the 1973 Act.

Clause 50 provides that the remuneration and allowances payable to members of the Licensing Committee and the Review Committee are to be a charge on the funds of the Victorian Egg Marketing Board. This is the same as Section 40 of the 1973 Act.

Clause 51 authorizes the Victorian Egg Marketing Board to use portion of its funds for the payment of premiums to insure members of the Licensing

Committee or the Review Committee against accident or sickness arising out of the performance of their duties as members.

Clause 52 is substantially the same as Section 41 of the 1973 Act. Sub-clause (1) requires the Licensing Committee and the Review Committee to keep true and regular accounts and have them audited by the Auditor-General (as required in the case of marketing boards constituted under the *Marketing of Primary Products Act 1958*).

Sub-clause (2) requires the Licensing Committee to remit to the Victorian Egg Marketing Board moneys received by the Licensing Committee except moneys otherwise payable under the Act.

Sub-clause (3) prohibits the Licensing Committee from making any payments other than those authorized by the Act.

Clause 53 requires persons who keep certain classes of hens to keep prescribed records. This Clause is substantially the same as Section 42 of the 1973 Act, subject to an extension to cover records relating to the keeping of pullets.

Clause 54 authorizes the Licensing Committee and the Review Committee to require applicants to furnish information specified by notice in writing, and to verify the information (if required by the relevant Committee) by statutory declaration. This Clause is substantially the same as Section 43 of the 1973 Act.

Clause 55 relates to the surrender of cancelled licences and is substantially the same as Section 44 of the 1973 Act.

Clause 56 prohibits members of the Licensing Committee and the Review Committee from exercising their vote on matters that directly affect their pecuniary interest, and is the same as Section 45 of the 1973 Act.

Clause 57 relates to the annual report of the Licensing Committee and the Review Committee and is similar to Section 46 of the 1973 Act.

Clause 58 allows the Minister to call for further reports from the Licensing Committee and the Review Committee, and is the same as Section 47 of the 1973 Act.

Clause 59 sets out the general penalty provision, i.e., 50 penalty units.

Clause 60 provides that where a person is convicted of keeping hens without a licence or a permit, an additional penalty may be imposed of 10 penalty units for each 100 hens (or part of that number) kept in contravention of the Act, together with an additional 1 penalty unit for every 100 hens or part of that number kept each day during which the offence continues after conviction.

Clause 61 provides that where a person is convicted of keeping more than the number of hens specified in his quota, the Court may in addition to any other penalty, impose a penalty of 5 penalty units per 100 hens, or part of that number, kept in excess of the permitted quota and 1 penalty unit for every 100 hens, or part of that number, kept each day during which the offence continues after conviction.

Clause 62 provides that any person convicted of keeping hens without a licence or a permit or keeping hens in excess of his quota is prohibited from purchasing hen quota for a period of twelve months from the date of conviction.

Clause 63 provides that where more than one licensee keeps hens at the same place, each licensee is liable for any offence under this legislation committed at that place.

Clause 64 relates to offences by corporations.

Clause 65 relates to the seizure of hens and eggs. Sub-clause (2) provides that where a complaint is made by an inspector on oath before a Stipendiary Magistrate and where reasonable grounds are shown in the inspector's statement,

the Magistrate may grant a warrant authorizing the inspector (and if necessary a member of the Police Force and other assistants) to enter the place named in the warrant for the purposes of exercising his functions under the legislation.

Sub-clause (3) provides that where an inspector enters a place in accordance with a warrant and finds that the number of hens being kept exceeds the permissible number, the inspector may seize or cause to be seized the hens that exceed that number together with any eggs apparently laid by those hens.

Sub-clause (4) requires the eggs to be forwarded to the Board. (This is necessary because all eggs are vested in the Board.)

Sub-clause (5) provides for a procedure for complaint to the Court within 7 days after the seizure and requires the Court to determine the complaint. If the seizure is disallowed, the Court may make such order as to compensation as it thinks fit. The Court may also make such order as to costs as it thinks fit.

Sub-clause (6) requires the Licensing Committee to satisfy the Court that the seizure complained of should not be disallowed.

Sub-clause (7) provides that compensation is to be determined on any basis or principles that may be prescribed in Regulations.

Sub-clause (8) provides that hens seized are to become the property of the Licensing Committee and may be dealt with as the Licensing Committee sees fit.

Sub-clause (9) provides that any person who, without the permission of an inspector, removes any hens seized in accordance with this Clause is guilty of an offence.

Sub-clause (10) requires inspectors who propose to seize hens under this Clause to comply with any reasonable request by the person apparently in charge.

Sub-clause (11) allows an inspector to exercise his powers and enter any place at any time, subject to the terms of the relevant warrant.

Sub-clause (12) provides that the proceeds of the sale of any hens seized under this Clause shall, after the deduction of costs, be paid into the Consolidated Fund.

Sub-clause (13) provides that the Board is not required to pay the Licensing Committee or the producer for eggs forwarded to it under sub-clause (4).

Sub-clause (14) provides that, subject to any order of the court, the costs incurred by the Committee in seizing or disposing of hens or eggs are to be borne by the person from whom the hens or eggs have been seized.

Sub-clause (15) is procedural.

Clause 66 provides that all proceedings are to be disposed of summarily before a Magistrates' Court.

Clause 67 provides that in any legal proceedings a certificate signed by the secretary of the Licensing Committee relating to specified matters shall be evidence of the facts stated unless the contrary is proved. This is substantially the same as Section 50A of the 1973 Act.

Clause 68 provides that no action or claim may lie against the Crown or other bodies or persons specified, and is similar to Section 51A of the 1973 Act.

Clause 69 sets out the Regulation-making powers. It is similar to Section 52 of the 1973 Act, except that additional Regulation-making powers have been included to cover Regulations relating to the sale of hen quota by tender, the establishment and conduct of a quota pooling system, and the calculation of amounts payable to vendors on the sale of hen quota by tender.

Clause 70 repeals the whole of the 1973 Act and includes a savings clause.

Clause 71 sets out transitional provisions relating to the Licensing Committee and provides that the members of the Licensing Committee

immediately prior to the commencement of this legislation are to be the members of the Licensing Committee established for the purposes of this Bill.

Clause 72 provides similar transitional provisions in relation to the Review Committee.

Clause 73 provides that all licences issued under the 1973 Act and in force immediately prior to the commencement of this legislation are to remain in force until 30 June 1984, and permits are to remain in force for the period specified in the permit.

Sub-clause (3) provides that hen quota held by a person under the 1973 Act immediately prior to the commencement of this legislation may continue to be held by that person subject to clause 74.

Clause 74 (1) provides that where immediately prior to the commencement of this legislation a licence was held by a partnership, the members of the partnership are to advise the Licensing Committee in writing by 30 April, 1984 of the name and address of each member of the partnership and the interest in the partnership held by each member.

Sub-clause (2) provides that where the Licensing Committee has been duly advised of the details required by the preceding sub-clause, it is to issue a separate licence to each member of the partnership in the name of that member and to allocate the hen quota among the members of the partnership in proportion to the interest held in the partnership by each member.

Sub-clause (3) provides that where the members of a partnership fail to provide the information required above, the Licensing Committee may issue a separate licence to each person who appears to it to be a member of that partnership and may re-allocate the hen quota to the members of the partnership in such proportions as appear appropriate to the Committee; or, alternatively, may cancel the licence and the hen quota.

Sub-clauses (4), (5) and (6) contain similar provisions with appropriate adaptations to meet the circumstances regarding companies.

Sub-clause (7) provides for a licence granted to a public company to be re-issued to the secretary of the company as nominee on behalf of the company.

Sub-clauses (8), (9) and (10) contain provisions similar to sub-clauses (4), (5) and (6) with appropriate adaptations to meet the circumstances regarding trusts.

Sub-clause (11) provides that where quota is cancelled under the provisions of this Clause, the Licensing Committee may sell the quota by tender on the application of the owner.

Sub-clause (12) provides that where a licence is issued and hen quota is allocated under sub-clause (2), (3), (5), (6), (7), (9) or (10), the person to whom the hen quota is allocated may retain the quota although he may not be a *bona fide* poultry farmer.

Sub-clauses (13) and (14) are procedural.

Clause 75 amends the *Marketing of Primary Products Act 1958* in relation to fixing the wholesale price of eggs and egg products. The Victorian Egg Marketing Board is required to fix such prices in accordance with any criteria that may be determined from time to time by the Governor in Council.

Schedule One sets out the electoral districts (or portions thereof) which comprise an area of central Victoria, referred to in the Bill as the Prescribed Area. Quota from farms outside that area cannot be transferred to farms inside the area, except when sold by tender. The area is the same as that described in the Schedule to the 1973 Act (except for including the Cranbourne South Subdivision of Westernport which had been inadvertently omitted).

Schedule Two sets out the Acts to be repealed by this Bill.