



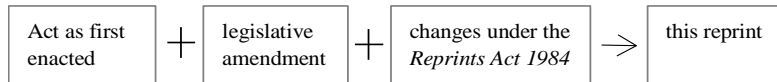
Western Australia

Marketing of Eggs Act 1945

Reprinted as at 22 February 2002

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Western Australia

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Defined Terms



Western Australia

Reprinted under the
Reprints Act 1984 as
at 22 February 2002

Marketing of Eggs Act 1945

An Act to consolidate and amend the law relating, to the production, marketing, sale, and disposal of eggs; to repeal the *Marketing Eggs Act 1938*, and the Act amending the same; and for other relative purposes.

[Long title amended by No. 114 of 1970 s. 2.]

1. Short title and commencement

This Act may be cited as the *Marketing of Eggs Act 1945* and shall come into operation on a date to be fixed by proclamation¹.

[2. Repealed by No. 10 of 1998 s. 76.]

Part I — Preliminary

3. Acts repealed

The following Acts are hereby repealed, namely —

- (a) the *Marketing of Eggs Act 1938* (No. 51 of 1938), and
- (b) the *Marketing of Eggs Act Amendment Act 1939* (No. 55 of 1939).

4. Operation

- (1) Subject as hereinafter provided, this Act shall operate and have effect throughout the State:

Provided that the Governor may, on the recommendation of the Minister, from time to time by proclamation exempt any part of the State defined in such proclamation from the operation of this Act, and may, on the like recommendation, by proclamation revoke or vary any such first-mentioned proclamation.

- (2) Notwithstanding anything contained in subsection (1) or any proclamation made thereunder, the provisions of Part IVA apply to the whole of the State.

[Section 4 amended by No. 114 of 1970 s. 4.]

5. Interpretation

- (1) In this Act, unless the context otherwise requires —

“Board” means the Western Australian Egg Marketing Board constituted under this Act;

“commercial producer” means a producer who owns at least 250 head of adult female poultry and who has delivered on his own account at least 3 000 dozen eggs to the Board in the immediately preceding period of 12 months;

“eggs” means eggs of fowls and of such species of birds as are prescribed, 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;

“**inspector**” means an inspector appointed or acting under the authority of this Act;

“**licensed collector**” means a person licensed under this Act as a collector of eggs;

“**poultry**” means fowls;

“**producer**” means a person who owns or controls more than 50 adult female fowls and sells the eggs or any of the eggs produced thereby. For the purpose of the definitions contained in this section a fowl shall be regarded as an adult if it has commenced laying eggs or is 6 months of age, whichever sooner happens;

“**public notice**” means a notice published in the *Government Gazette* and in a newspaper published at Perth;

“**registered agent**” means agent of the Board for the time being registered under this Act;

“**sell**” includes barter and/or exchange and “**sale**” has a corresponding meaning;

“**sale by retail**” means sale in such quantity and on such conditions, if any, as are declared from time to time by the Board and published from time to time in the *Gazette*.

- (2) For the purposes of this Act, all fowls on any premises shall, unless the Board in writing otherwise directs, be conclusively presumed to be kept by the occupier of those premises.
- (3) For the purposes of the interpretation “commercial producer” contained in subsection (1), any eggs sold by a producer pursuant to a permit granted by the Board under section 23 to him or to the purchaser of the eggs shall be deemed to have been delivered by that producer to the Board.

[Section 5 amended by No. 50 of 1955 s. 2; No. 110 of 1969 s. 2; No. 37 of 1975 s. 3; No. 69 of 1977 s. 2; No. 122 of 1987 s. 4; No. 40 of 1995 s. 4.]

6. Construction

This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative powers of the Parliament of this State, to the intent that, where any provision therein would, but for this section, be construed as being in excess of those powers, it shall nevertheless be deemed to be validly enacted to the extent to which it is not in excess of those powers.

Part II — The Western Australian Egg Marketing Board

Division 1 — Constitution and proceedings of Board

7. Constitution of Board

- (1) For the purposes of this Act, a Board to be known as “The Western Australian Egg Marketing Board” is hereby constituted.
- (2) The Board shall consist of 5 members appointed by the Governor.
- (3) Subject to the provisions of the next succeeding subsection, of the said 5 members —
 - [(a) repealed]*
 - (b) 2 shall be persons nominated by the Minister to represent the consumers;
 - (c) 2 shall be persons, who are commercial producers and are elected by the commercial producers for appointment by the Governor as members of the Board;
 - (d) one shall be a person nominated by the Minister who is not engaged or financially interested in the business of producing or selling eggs and who shall be the Chairman of the Board.
- (4) A person who is a member of the Board by virtue of subsection (3)(c) shall forfeit his office if for any continuous period of 3 months he fails to hold the qualifications required for his election.

[Section 7 amended by No. 50 of 1949 s. 3; No. 110 of 1969 s. 3; No. 122 of 1987 s. 5; No. 40 of 1995 s. 5.]

8. Election of elective members

- (1) The election of the elective members of the Board shall be held and conducted in such manner and at such times as shall be prescribed by regulations.
- (2) The expenses incurred in connection with the election of the elective members of the Board shall be a charge upon, and shall be paid out of moneys from time to time in the hands of the Board for the purposes of this Act.

9. Board a body corporate

- (1) The Board shall be a body corporate, with perpetual succession and a common seal, and may sue and be sued, and acquire and hold real and personal property under the name of the Western Australian Egg Marketing Board.
- (2) All or any of the activities of the Board may be carried on under —
 - (a) the name of the Board; or
 - (b) subject to the *Business Names Act 1962*, a trading name approved by the Minister,

where the Board so determines and the Minister approves.

[Section 9 amended by No. 122 of 1987 s. 6.]

10. Board not to represent the Crown

The Board shall not, except in relation to any matter in which the Board is specially authorised by the Governor to act on behalf of the Crown, be the agent or servant or the representative of the Crown.

11. Remuneration of members of Board

- (1) The members of the Board and their deputies shall be entitled to be paid such remuneration and expenses as are approved by the Governor.

- (2) Such remuneration and expenses shall be paid out of the moneys from time to time in the hands of the Board for the purposes of this Act.

[Section 11 amended by No. 5 of 1951 s. 3.]

12. Terms of office

- (1) Each member of the Board including the Chairman shall hold office subject to good behaviour for such period not exceeding 3 years as is specified in the instrument of his appointment, and shall be eligible for re-nomination or re-election as the case may be.

[(2) repealed]

[Section 12 inserted by No. 110 of 1969 s. 4; amended by No. 37 of 1975 s. 4; No. 69 of 1977 s. 3.]

12A. Appointment of deputies

- (1) The Minister may, in respect of each member of the Board, subject to the provision of the second sentence in section 15(2), appoint a person representative of the same interests as the member to be a deputy of that member.
- (2) A person so appointed shall, in the event of the illness or absence of the member of whom he is the deputy, have all the powers of that member during his illness or absence.
- (3) Neither the appointment of a person as a deputy nor any act done by him in that capacity shall be questioned in any proceedings on the ground that the occasion for his appointment had not arisen or had ceased.

[Section 12A inserted by No. 5 of 1951 s. 4.]

13. Casual vacancies

- (1) The office of a member shall become vacant if he —
(a) dies;

Marketing of Eggs Act 1945

Part II The Western Australian Egg Marketing Board

Division 1 Constitution and proceedings of Board

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- (b) resigns by written notice given to the Minister;
 - (c) is removed from his office by the Governor for misbehaviour or mental or physical incapacity to perform his duties as a member;
 - (d) absents himself without permission of the Board from more than 4 consecutive meetings of the Board, and is declared by resolution of the Board to have forfeited his seat.
- (2) A member appointed to fill a casual vacancy on the Board shall hold office for the balance only of the term of the member in whose place he is appointed.

14. Proceedings of Board, not invalidated by vacancies or defects

- (1) No act or proceeding of the Board shall be invalid or illegal in consequence only of the number of members of the Board not being complete at the time of such act or proceeding.
- (2) All acts and proceedings of the Board shall, notwithstanding the subsequent discovery of any defect in the appointment or qualification of any member thereof, be as valid as if such member had been properly appointed and qualified.

15. Powers of Board how exercised

- (1) All powers vested in the Board may be exercised by a majority of the members present at any meeting duly held at which a quorum is present, and all questions shall be decided by a majority and by open voting.
- (2) The chairman shall preside at every meeting of the Board at which he is present. If the chairman is absent from a meeting the other members of the Board present shall select one of their number to act as chairman at that meeting.

- (3) The chairman shall have a deliberative vote only, and if the numbers are equally divided on any question, such question shall be deemed to be resolved in the negative.
- (4) Three members of the Board shall form a quorum.

16. Meetings of the Board

- (1) The first meeting of the Board after the passing of this Act shall be convened by the chairman, and thereafter meetings shall be held at the times and places determined by the Board: Provided that the chairman may, on reasonable notice to members of the Board, call a meeting at any time.
- (2) Subject to this Act, the business of the Board shall be conducted in such manner as the Board determines.

Division 2 — General powers of Board

17. Officers of Board

- (1) The Board may appoint a general manager, a secretary, inspectors, clerks and other officers and employees as it requires to assist it —
 - (a) in the administration of this Act;
 - (b) in the collection, handling, examination, grading, treatment, storage, distribution and sale of eggs, and in the fixing from time to time of the maximum price at which each respective grade of eggs may be sold by retail, and other services incidental or auxiliary to any of the foregoing matters.
- (2) With the consent of the Minister administering any Department of the Public Service of the State, the Board may, on any terms agreed between itself and the Minister, make use of the services of any person employed in that department.
- (3) The salaries, wages and other expenses payable to persons employed or otherwise engaged by the Board shall be charged

upon and be payable out of the moneys from time to time in the hands of the Board for the purposes of this Act.

[Section 17 amended by No. 50 of 1955 s. 3; No. 122 of 1988 s. 7; No. 40 of 1995 s. 6.]

18. General powers of Board

- (1) The Board may for the purposes of carrying out the duties and functions imposed on it by the other provisions of this Act —
- (a) buy, lease, or sell any property;
 - (b) enter into any contract;
 - (c) borrow money and mortgage or charge any of its property as security for the repayment of any money borrowed;
 - (d) delegate any of its functions and revoke any such delegation;
 - (e) establish or maintain premises for receiving, handling, grading, treatment, storage or sale of eggs;
 - (f) dry any eggs, whether belonging to itself or other person, and carry out any pulping or processing incidental to the drying of eggs;
 - (g) contract or arrange for the pulping, drying or processing of any eggs;
 - (h) purchase, hire, construct, erect and maintain any premises, machinery, plant and equipment required for any pulping, drying, packing or processing which the Board has the power to carry out;
 - (i) engage in the manufacture of cases, egg fillers, containers, tins, crates and cartons;
 - (j) undertake printing and publishing, transport and carrying services;
 - (k) exercise the functions usually exercised by shipping agents;

- (l) establish, maintain and contribute to a scheme to make financial provision in respect of the retirement, invalidity or death of such officers and employees of the Board as become members of that scheme, or contribute to any such scheme controlled otherwise than by the Board;
 - (m) make loans or advances to officers and employees of the Board for the purpose of facilitating the purchase by such persons of motor vehicles to be utilised on the business of the Board.
- (2) The Board is authorised and required to perform the functions and carry out the duties that are to be performed and carried out by it under any arrangement entered into between the Commonwealth and State pursuant to the *Poultry Industry Levy Collection Act 1965*, and the *Egg Export Control Act 1947*, of the Parliament of the Commonwealth and any Acts amending or in substitution for those Acts or either of them.

[Section 18 amended by No. 23 of 1965 s. 2; No. 37 of 1975 s. 5; No. 69 of 1977 s. 4.]

Part III — Registered agents and licensed collectors

19. Registered agents of Board

- (1) For the purposes of this Act the Board may register, subject to such conditions as may be attached by the Board, 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.
- (3) The Board shall have a discretion to grant or refuse registration to any applicant therefor.
- (4) The registration of an agent shall remain in force until it is cancelled or the agent surrenders it or dies.
- (5) The Board may cancel the registration of any agent if he has failed in any way to comply with this Act, or with the conditions attached to his registration, 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.
- (6) Every registered agent shall be entitled to take deliveries 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.

[20. Repealed by No. 122 of 1987 s. 8.]

Part IV — Marketing of eggs

21. Duty to sell and deliver eggs to Board

- (1) The Board may by a public notice fix a day (in this section called “**the appointed day**”) on and after which every producer must comply with the requirements of this Act as to the sale and delivery of eggs.
- (2) On or after the appointed day a producer shall not sell or deliver any eggs to any person other than the Board and a person other than the Board shall not purchase or take delivery of any eggs from a producer: Provided that the foregoing provision of this subsection shall not apply to any eggs sold or delivered as allowed under section 23.
- (3) 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 all requirements prescribed by regulation.

22. Effect of delivery of eggs to Board

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.

23. Exemptions

- (1) The Board may grant a permit to any producer authorising him to sell eggs to a person or persons (not being the Board or a person holding a permit under subsection (3)) subject to such conditions and restrictions as the Board determines.

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- (2) A person holding a permit granted under subsection (1) shall comply with the conditions and restrictions to which the permit is subject and may sell eggs in accordance with the terms of such permit, notwithstanding the provisions of section 21.
- (3)
 - (a) The Board may grant a permit to any person authorising him to purchase eggs from producers who do not hold permits issued under this section, subject to such conditions and restrictions as the Board determines, but nothing in this section shall be taken to require any such person to purchase any eggs if he does not think fit to do so.
 - (b) Where a person is the holder of a permit he shall comply with the conditions and restrictions to which the permit is subject and a producer may sell to that person notwithstanding the provisions of section 21.
- (4) Where a producer produces or has produced eggs to which the notice referred to in section 21 or the permit referred to in this section applies, those eggs shall, for the purposes of this Act, be deemed to be or to have been vested in the producer until he sells or sold them or disposes or disposed of them.
- (5) The Board may revoke or vary any permit or consent granted by it under this section and may vary the conditions and restrictions to which any permit or consent is subject.
- (6) The Board may, by a public notice or, by written notice given to the producers thereby affected, in such cases and on such terms as may be prescribed exempt (either generally or in any particular case) from the operations of the last 2 preceding sections —
 - (a) such producers of small quantities of eggs as the Board may think fit;
 - (b) sales direct to local consumers or to retail vendors;
 - (c) such eggs as the producer may require for his own use;

- (d) such eggs of his own as the producer may use for incubation in connection with his own business;
- (e) such other sales, purchases or transactions as may be prescribed,

and may at any time revoke or vary the conditions of such exemption.

- (7) The Board's decision as to whether any specified person or article falls within the limits of any such exemption shall be final.

[Section 23 amended by No. 19 of 1949 s. 3.]

24. Restrictions on use of eggs produced by certain persons

- (1) Subject to subsection (2), a person shall not, use in or in connections with any hotel, boarding house, restaurant, manufacturing business or other business (whether wholesale or retail) which is owned or conducted by him, eggs produced by any fowls owned by him or under his control.
- (2) The Board may grant a permit to any person for the purposes of removing the restrictions imposed by subsection (1). Such permit may be granted subject to any conditions which the Board may think fit to impose.

[Section 24 amended by No. 69 of 1977 s. 5; No. 40 of 1995 s. 7.]

25. Mode of delivery to Board

- (1) Delivery of eggs to the Board shall be effected by delivering the eggs to any egg floor operated by the Board or to a registered agent of the Board.
- (2) The tendering of eggs by a producer or person on his behalf, to a registered agent direct or through a licensed collector 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.

26. Certificate to producer upon delivery

- (1) As soon as practicable after the receipt of any eggs the Board shall issue to the producer 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.

27. Issue of certificate to person other than producer

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 to be issued to that person.

28. Determination of amounts payable to producers

The Board shall from time to time determine the amount payable to producers with respect to eggs delivered to it.

[Section 28 inserted by No. 69 of 1977 s. 6.]

29. Liens, Mortgages, etc.

No person claiming any right or title, whether as owner of or as being entitled to any lien, mortgage, charge, encumbrance or other claim over any eggs delivered to the Board, shall have any claim against the Board on account thereof.

30. Sale of eggs by Board

- (1) Subject to this Act the Board may sell or arrange for the sale of all eggs of which it becomes the owner, to such persons and at such prices and on such terms as it deems proper.
- (2) The Board may, before selling any eggs, arrange for them to be pulped, dried or otherwise processed on behalf of the Board or on behalf of the purchaser or the Board may carry out these operations itself if deemed expedient.
- (3) In arranging for the selling or processing of any eggs the Board may, in particular, but without limiting the generality of the foregoing powers in this section —
 - (a) appoint and employ such agents, servants and officers as may be necessary;
 - (b) arrange with the Government of the Commonwealth, or the State, or with any bank, for financial assistance or accommodation, and give such security over its assets and property as it shall consider reasonable;
 - (c) as far as practicable provide eggs for consumption within the State, and for the supply thereof during any period of shortage to those places within the State where any shortage is experienced;
 - (d) make such arrangements as may be deemed necessary with regard to sales for export or for oversea ships' stores, or for consignment to other countries or States;
 - (e) become, by the acquisition of shares, a shareholder in any incorporated company, or enter into any agreement with any Commonwealth authority, or person, any association of persons, whether corporate or unincorporate, or with egg marketing boards or corporations of any other States of the Commonwealth established under the laws of those States relating to the marketing of eggs with a view to procuring or joining with others in procuring the co-ordination and regulation

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of the control of the marketing of eggs both within and outside the Commonwealth.

Provided that the power conferred by this paragraph shall not be exercised without the approval of the Governor.

31. Grading

- (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.
- (2) The price paid by the Board to producers for eggs which have been graded, shall vary according to the grade of the eggs.
- (3) The Board may make premium payments to producers for eggs sold to the Board having characteristics or qualities which, in the opinion of the Board, will assist in or improve the marketing of eggs both on markets within and outside the State.
- (4) The Board may reduce the amount payable to producers for eggs sold to the Board having characteristics or qualities which in the opinion of the Board will render it more difficult for those eggs to be sold within and outside the State.

[Section 31 amended by No. 14 of 1960 s. 2; No. 69 of 1977 s. 7; No. 122 of 1987 s. 9.]

31A. Board has power to fix maximum prices for sale of eggs by retail

The Board is hereby authorised from time to time to fix the maximum price at which each respective grade of eggs may be sold by retail, and is authorised to determine, from time to time, what constitutes sale of eggs by retail.

[Section 31A inserted by No. 50 of 1955 s. 4.]

31AA. Codes for grading and packing

- (1) The Board may with the approval of the Minister formulate codes providing for the grading, marking and packing of eggs.
- (2) The Board may in a code formulated under subsection (1) specify the package or kind of package to be used in relation to eggs or eggs of a particular class.

[Section 31AA inserted by No. 122 of 1987 s. 10.]

31AB. Eggs to conform to grades

- (1) Except in the case of a sale for export from the State, a person shall not himself or by his servant or agent sell eggs or any egg product by way of retail sale unless —
 - (a) the eggs conform to a code under section 31AA;
 - (b) the package containing the eggs or egg products is marked in accordance with a code formulated under section 31AA; and
 - (c) the eggs conform to the grade or standard indicated on the package containing the eggs.

[Section 31AB inserted by No. 122 of 1987 s. 10.]

31AC. Eggs and egg products to be packed and graded

Except in the case of a sale for export, a person who packs any eggs or egg products intended for sale otherwise than by way of retail sale shall grade the eggs or egg products and pack and mark the package in accordance with a code formulated under section 31AA.

[Section 31AC inserted by No. 122 of 1987 s. 10.]

s. 31AD

31AD. Offence — contravention of s. 31AB or 31AC

A person who contravenes section 31AB or 31AC commits an offence.

Penalty: \$400.

[Section 31AD inserted by No. 122 of 1987 s. 10.]

31B. Offence — selling eggs for greater than fixed maximum price

Where the Board, by notice published in the *Gazette*, fixes the maximum price at which a grade of eggs may be sold by retail and declares what constitutes sale by retail, a person who sells or attempts to sell by retail or offers for sale by retail, eggs of that grade at a price greater than the maximum price so fixed, commits an offence.

[Section 31B inserted by No. 50 of 1955 s. 4.]

32. Payment to producers

- (1) Subject to this Act the Board shall, out of the proceeds of eggs disposed of by it under this Act, make payments to each producer with respect to eggs delivered by him to the Board on the basis of the determination made under section 28, and payments shall be made at such time and on such terms and conditions and in such manner as the Board thinks fit.
- (2) For the purpose of ascertaining the net price to be paid to the producers of eggs delivered to the Board, and generally for the purpose of this Act, the Board's decision as to the quality or standard of such eggs, the method of determining the dockages or deductions, cost of freight and other charges, and all expenses incurred in or about the marketing of the eggs and the administration of this Act shall be final.
- (3) The Board may settle and adjust all conflicting claims in respect to payments to be made in respect of any eggs under this section; but at the request of any party to a dispute regarding

any such claim the dispute shall be referred in the prescribed manner for decision by the local court held nearest to the office of the Board.

- (4) In any financial year the Board may, out of its gross income, carry over to the next succeeding financial year not more than 1% thereof and any amount so carried over shall become part of the general funds of the Board.
- (4a) The Board may from time to time impose a charge determined by the Board on every producer licensed by the Board under this Act.
- (4b) The charge referred to in subsection (4a) —
 - (a) may be assessed on such basis as is determined by the Board;
 - (b) is payable within such time as is specified by the Board.
- (4c) The proceeds of any charges fixed by the Board under subsections (4a) and (4b) shall be applied by the Board for the purposes of the general administration, marketing and other costs of the Board.
- (4d) A person who fails or neglects to pay a charge determined by the Board under subsection (4b) commits an offence and is liable to a penalty of \$1 000 and in addition the court shall order that the offender pay to the Board the amount of any moneys payable by the offender under subsection (4a).
- (5)
 - (a) Where a producer is the holder of a permit granted under section 23(1), he shall contribute to the general funds of the Board such amount as the Board may determine from time to time.
 - (b) Where a person is the holder of a permit granted under section 23(3), he shall deduct from the price payable to the producer such amount as the Board may determine from time to time and shall remit the amount to the Board as contribution to the general funds of the Board

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in accordance with the terms and conditions of the permit.

- (c) The amounts referred to in this subsection are payable to the Board in addition to any other charges required to be paid to the Board under this Act.

Provided that eggs used or sold for the purpose of hatching shall be exempt from all charges under this Act.

- (6) All moneys standing to the credit of the fund called “The Board Administration Account” immediately before the date of the coming into operation of the *Marketing of Eggs Act Amendment Act 1977*¹ shall by force of this subsection become part of the general funds of the Board.

[Section 32 amended by No. 19 of 1949 s. 4; No. 37 of 1975 s. 6; No. 69 of 1977 s. 8; No. 122 of 1987 s. 11.]

Part IVA — Licensing of producers

[Heading inserted by No. 114 of 1970 s. 5.]

32A. Interpretation

In this Part unless the contrary intention appears —

“**fowl**” means a female domesticated fowl that is not less than 6 months of age;

“**keep**” in relation to any fowls means own or control the fowls;

“**license**” means a license granted under the provisions of this Part.

[Section 32A inserted by No. 114 of 1970 s. 5; amended by No. 37 of 1975 s. 7.]

32B. Duration and conditions of licenses

A license under this Part shall take effect on 1 January and, unless sooner surrendered or cancelled, shall remain in force for the calendar year.

[Section 32B inserted by No. 37 of 1975 s. 8.]

32C. Invitation for applications for licenses

- (1) Not later than 31 October in each year the Board shall cause to be published on at least 2 occasions in a newspaper circulating throughout the State a notice setting out the manner and form in which, and the date before which, applications are to be made to the Board for a license under this Part in respect of the licensing year then next ensuing.
- (2) Any person may, by application served on the Board, apply for the grant to him of a license.

s. 32D

- (3) An application made under this section shall not be considered by the Board unless —
- (a) the application is made in accordance, or substantially in accordance, with the manner and form specified in the notice published pursuant to subsection (1);
 - (b) it is accompanied by a statutory declaration verifying all statements and matters set out in, or submitted with, the application; and
 - (c) it is received by the Board on or before the date fixed by the notice for the making of such an application.

[Section 32C inserted by No. 114 of 1970 s. 7; amended by No. 37 of 1975 s. 9.]

32D. Bases or principles on which applications to be determined

- (1) Before the Board considers any application made under section 32C in respect of a licensing year, the Board shall submit to the Minister a statement setting out —
- (a) the number of eggs which it considers will be necessary to meet the requirements of the Board in that licensing year and the number of fowls necessary to produce that number of eggs; and
 - (b) its recommendations as to the bases or principles on which applications for licenses in respect of that licensing year should be determined.
- (2) The Minister shall, after considering a statement submitted to him under subsection (1) in respect of a licensing year, furnish the Board with directions in writing, not inconsistent with this Act, as to the bases or principles on which the Board is to determine applications for licenses made to it in respect of that licensing year.

[Section 32D inserted by No. 114 of 1970 s. 8.]

32E. Determination of applications

- (1) Subject to section 32C(2) and to the succeeding provisions of this section, the Board shall consider any application made to it for a license in respect of a licensing year and shall either grant a license to the applicant or refuse the application and shall in either case advise the applicant in writing of its decision.
- (2) Where the Board grants a license pursuant to subsection (1) the Board shall cause to be clearly endorsed on the license —
 - (a) the name and address of the person to whom it is granted, and the licensing year for which the license has been granted; and
 - (b) the number of fowls which the license authorises the holder thereof to keep during the licensing year for which it is granted,

and, subject to section 32G and to section 32J, a license authorises the person to whom it is so granted to keep during the licensing year for which the license is granted the number of fowls endorsed on the license.

[(3) deleted]

- (3a) On the recommendation of the Board —
 - (a) the Minister may from time to time determine the maximum number of fowls which any person or association of persons may be licensed to keep;
 - (b) regulations may be made prescribing the principles upon which the Board shall determine whether or not any persons shall be regarded for the purposes of this subsection as constituting an association of persons.
- (4) Subject to subsection (5), the Board shall not grant a license for any licensing year except to a person who, at the end of the immediately preceding licensing year, held a license for that lastmentioned licensing year.

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- (5) Where the Board proposes to grant licenses for a licensing year authorising all of the holders thereof to keep, in the aggregate, a number of fowls exceeding that authorised to be kept by all of the licenses granted for the immediately preceding licensing year, the Board may grant licenses to persons who did not hold licenses granted for the immediately preceding licensing year but so that the total of the number of fowls authorised to be kept by those persons does not exceed one-quarter of the difference between the total of the number of fowls authorised to be kept by all of the holders of licenses granted for the immediately preceding licensing year and the total number of fowls that all of the holders of licenses for the ensuing licensing year will be authorised to keep.
- (6) In exercising its powers under this section in respect of a licensing year, the Board shall give effect to the directions given to it by the Minister under section 32D(2) in respect of that licensing year.

[Section 32E inserted by No. 114 of 1970 s. 9; amended by No. 37 of 1975 s. 10; No. 122 of 1987 s. 12.]

32F. Supplementary licenses

- (1) Where the Board is of the opinion that the number of eggs likely to be produced during any part of a licensing year will be insufficient to meet its requirements for that part of the licensing year, the Board may grant to the holders of the licenses for that licensing year supplementary licenses in accordance with the provisions of this section.
- (2) The Board shall not grant supplementary licenses except —
- [(a) deleted]*
- (b) to persons who are holders of licenses for the licensing year in which the supplementary licenses are granted,
- and, subject to section 32G and to section 32J, a person to whom a supplementary license is so granted is thereby authorised, during the period specified for the purpose in the

supplementary license, to keep such additional number of fowls as are endorsed on the supplementary license.

[Section 32F inserted by No. 114 of 1970 s. 10; amended by No. 37 of 1975 s. 11; No. 40 of 1995 s. 8.]

32FA. Reduction in authorised flocks, during licensing year

Where the Board is of the opinion that the number of eggs likely to be produced during any part of a licensing year will be in excess of the requirements of the Board, the Board may by notice published in the *Government Gazette*, rateably reduce the number of fowls authorised to be kept during the licensing year by persons who are the holders of a license or supplementary license under this Part and thereupon each such license or supplementary license shall be deemed to have been so varied.

[Section 32FA inserted by No. 37 of 1975 s. 12; amended by No. 40 of 1995 s. 9.]

32G. Transfers

- (1) Subject to subsection (2) a license or a supplementary license may, with the prior approval in writing of the Board, be transferred from one person to another either in its entirety or as to any part thereof.
- (2) A transfer of a licence under subsection (1) shall be consented to —
 - (a) where the transferor is a body corporate or an association of persons not being a partnership — by every person who is a member of the body corporate or association, as the case requires; or
 - (b) where the transferor is a partnership — by every person who is a member of the partnership.
- (3) Where an application is made for the approval of the Board to the transfer of a license or a supplementary license otherwise than in its entirety the holder shall return that license to the

s. 32H

Board on demand and the number of fowls which he is authorised to keep and is endorsed thereon shall be amended accordingly upon that transfer taking effect.

[Section 32G inserted by No. 114 of 1970 s. 11; amended by No. 37 of 1975 s. 13; No. 122 of 1987 s. 13.]

32H. Appeals

- (1) Where a person who applied for a license considers that the Board failed, in considering his application, to comply with, or give effect to, the directions given to the Board in that regard by the Minister under section 32D(2), he may, within 28 days of receiving from the Board written advice of the decision of the Board, appeal in writing on that ground only to the Minister against —
- (a) the refusal of the Board to grant him a license; or
 - (b) the number of fowls endorsed on the license granted to him by the Board,

and the person shall set out in his appeal the reasons on which the appeal is made.

- (2) The Minister shall consider every appeal made to him in accordance with subsection (1) and may confirm, vary or set aside the decision of the Board, and the decision of the Minister is final and not subject to any appeal.

[Section 32H inserted by No. 114 of 1970 s. 12.]

32I. Protection against actions

- (1) No action, claim or demand whatsoever shall lie or be made or allowed by or in favour of any person against —
- (a) Her Majesty;
 - (b) the State;
 - (c) the Minister;
 - (d) the Board; or

- (e) any member, officer or employee of the Board,
with respect to anything done for the purpose of carrying out or
giving effect to the provisions or objects of this Part.
- (2) Subsection (1) has effect subject to the *Statutory Corporations
(Liability of Directors) Act 1996*.
*[Section 32I inserted by No. 114 of 1970 s. 13; amended by
No. 41 of 1996 s. 3.]*

32J. Cancellation of licenses

- (1) Where the Board is satisfied that the holder of a license or
supplementary license —
 - (a) has been granted the license or supplementary license
erroneously or as a result of any false or misleading
statement or representation; or
 - (b) has withheld information or has provided false
information concerning a license or supplementary
license,

the Board may by notice in writing advise the person specified
in the notice that on a day, being not less than 14 days from the
day of sending the notice, the Board intends for reasons stated
in the notice to consider whether or not that license or
supplementary license should be cancelled or varied as specified
in the notice and that if he so desires he may submit reasons in
writing opposing the proposed cancellation or variation.

- (2) On the day specified in the notice, or on any later day to which
the matter is adjourned by the Board, the Board shall decide,
after considering all objections, whether or not to cancel or vary
that license or supplementary license.
- (3) A person whose license or supplementary license has been
cancelled or varied by the Board under subsection (2) may
appeal in writing to the Minister against the decision of the

s. 32K

Board and the Minister may confirm, vary or set aside the decision of the Board.

[Section 32J inserted by No. 114 of 1970 s. 14.]

32K. Offences

Subject to section 32L, a person shall not at any time during a licensing year —

- (a) keep more than 20 fowls for the purpose of producing eggs for sale unless he is at that time the holder of a license granted under this Part for that licensing year; or
- (b) keep, for the purpose of producing eggs for sale, a number of fowls greater than the number of fowls which he is authorised, by virtue of a license or a license and a supplementary license, as the case may be, granted under this Part for that licensing year, to keep at that time.

Penalty: For a first offence, a fine not exceeding \$500; for a second offence, a fine not exceeding \$1 000 and for a third or subsequent offence a fine not exceeding \$2 000.

[Section 32K inserted by No. 114 of 1970 s. 15; amended by No. 37 of 1975 s. 14; No. 122 of 1987 s. 14; No. 20 of 1989 s. 3.]

32L. Breeding fowls

- (1) In this section —

“**breeding fowl**” means a fowl which is kept for the purpose of producing hatching eggs;

“**pullet**” means a female domesticated fowl than has begun to lay but is less than 6 months of age.

- (2) Nothing in section 32K(a) requires a person who at any time during a licensing year owns or keeps breeding fowls only, to be the holder of a license granted under this Part.

- (3) Where a person who is the holder of a license granted under this Part also keeps breeding fowls, any breeding fowls kept by him shall not be taken into account for the purposes of section 32K(b).
- (4) Notwithstanding any other provision of this Part, a person who is or has been carrying on the business of producing hatching eggs may apply to the Board for the consent of the Board in writing for him to continue to keep any fowls which have been kept by him as breeding fowls, notwithstanding —
 - (a) that he is not the holder of a license granted under this Part; or
 - (b) that he is the holder of such a license, but that the number of fowls endorsed on his license will be exceeded if he ceases to keep those breeding fowls for the production of hatching eggs.
- (5) Where the Board gives its consent to a person in accordance with subsection (4) it shall specify therein the period for which its consent is to have effect, but the Board may, in writing, at any time while its consent has effect —
 - (a) extend the period for which its consent is to have effect; or
 - (b) revoke its consent.
- (6) A person who keeps breeding fowls shall —
 - (a) within 7 days of the first day of each of the months of January, April, July and October, in each year, furnish the Board with a statement setting out the place at which the fowls are kept and the number of fowls so kept by him on each of those days;
 - (b) permit any member or officer or employee of the Board or any inspector to enter upon and inspect any place at or on which he keeps breeding fowls; and

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- (c) furnish to the Board such other information relevant to, or concerning, his business of the production of hatching eggs for sale as the Board requires.
- (7) Any person who, for the purpose of selling the chickens or pullets to producers, hatches eggs or rears chickens or pullets shall —
 - (a) if so required by the Board by notice in writing keep a record of such sales and deliver to the Board in each month a return on the form provided by the Board for that purpose showing whether any or what number of chickens and pullets were sold during the previous month and the name and address of each purchaser; and
 - (b) truthfully answer any question relating to any returns submitted to the Board or relating to the sale of chickens or pullets to licensed producers.
- (8) A producer who purchases or otherwise acquires any chickens, pullets, or fowls or who disposes of any chickens, pullets, or fowls by sale or otherwise shall —
 - (a) within 14 days thereafter notify the Board in writing of the name and address of the other party to the transaction, the date of the purchase, acquisition or disposal, as the case may be, and the number and age of the chickens, pullets, or fowls involved; and
 - (b) furnish to the Board such other information relevant to, or concerning, the transaction as the Board requires.

[Section 32L inserted by No. 114 of 1970 s. 16; amended by No. 37 of 1975 s. 15; No. 122 of 1987 s. 15.]

32M. Board may obtain information, etc.

- (1) The Board may —
 - (a) obtain any information it considers necessary or expedient for exercising its powers and performing its duties under this Part;

- (b) obtain assistance or advice from any person or organisation;
 - (c) cause any place on which fowls or breeding fowls are kept to be inspected either by the members of the Board or by any person specifically authorised in that behalf by the Chairman of the Board.
- (2) The Board shall furnish the Minister with such advice, reports, and information concerning licenses and supplementary licenses as the Minister requires from time to time.

[Section 32M inserted by No. 114 of 1970 s. 17.]

32MA. Minister may grant special licenses

- (1) Notwithstanding anything in this Part, the Minister may declare any part of the State to be a remote area and may issue a special license to a person in that part of the State subject to such terms and conditions as the Minister thinks fit and specifies in the license.
- (2) The Minister may vary or cancel any declaration made under subsection (1) and any license issued thereunder.

[Section 32MA inserted by No. 69 of 1977 s. 9.]

32N. Proceedings

All matters to be considered by the Board or the Minister under or for the purposes of this Part shall, unless otherwise determined by the Board or Minister, as the case may be, be submitted in writing to the Board or the Minister, and no person shall be entitled to appear personally or by counsel before the Board or the Minister.

[Section 32N inserted by No. 114 of 1970 s. 18.]

Part V — Miscellaneous

33. Non-liability of Board

- (1) Where the Board has in good faith and without negligence made any payment —
 - (a) to a producer delivering or causing to be delivered any eggs to the Board or to any person on its behalf;
 - (b) to any person entitled or claiming to be entitled through such producer; or
 - (c) to any person on the order of such producer or person,the Board shall not be answerable to any other person in respect of such payment, or any part thereof, or to any action or proceeding whatsoever for damages or otherwise in respect thereof.
- (2) For the purpose of this section any person who is believed by the Board or its representative, on reasonable grounds, to be the producer, shall be deemed to be such producer.
- (3) This section shall not affect the rights *inter se* of any parties claiming adversely to one another in respect of any such payment or any part thereof.

34. Application of *Financial Administration and Audit Act 1985*

- (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Board and its operations.
- (2) Notwithstanding anything in the *Financial Administration and Audit Act 1985*, the financial year for the purposes of this Act is the period of 52 or 53 weeks (and in this context “**week**” means a period of 7 days commencing on Sunday), as the case requires, ending on the Saturday nearest to 30 June in any year that is appointed by the Minister by notice published in the

Government Gazette before the commencement of the financial year in question.

[Section 34 inserted by No. 98 of 1985 s. 3; amended by No. 122 of 1987 s. 16.]

35. Expenditure a charge on proceeds of sale of eggs

All expenditure of the Board and all claims against the Board shall be a charge upon the proceeds of eggs marketed by the Board which to the necessary extent shall be deemed part of the Board's funds accordingly.

[36. Repealed by No. 98 of 1985 s. 3.]

37. Offences and penalties

- (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 an offence against this Act for which no other penalty is expressly provided shall be liable to a fine not exceeding \$2 000.
- (3) Proceedings for offences against this Act shall be heard and determined summarily.

[Section 37 amended by No. 37 of 1975 s. 16; No. 122 of 1987 s. 17; No. 20 of 1989 s. 3.]

38. How legal proceedings taken

- (1) Any proceedings, whether civil or penal, may be taken in the name of the Board by the general manager, secretary or by any officer of the Board authorised in that behalf by the Board.
- (2) No proof shall be required of the appointment of the secretary or any officer as an officer of the Board, or of the authority of the secretary or officer to take civil or penal proceedings in the name of the Board but the averment on the process that the

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secretary or officer aforesaid is so authorised shall be deemed to be conclusive proof of the fact.

[Section 38 amended by No. 122 of 1987 s. 18.]

38A. Proceeds of winding up to be applied for the benefit of the egg industry

In the event of the Board being wound up, the proceeds of the Board's assets remaining after the Board's liabilities and the expenses of the winding up have been met, shall be applied in such manner as the Governor directs, and is hereby authorised to direct, for the benefit of the egg industry of the State.

[Section 38A inserted by No. 42 of 1954 s. 2.]

39. Regulations

- (1) The Governor may make regulations under this Act prescribing all such matters as by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to or achieving the objects of this Act and facilitating the exercise of its powers by the Board, or, in the event of the Board being wound up, for achieving or facilitating the winding up of the Board.
- (2) The power hereby given shall (without limiting its generality) be deemed to include power to make regulations —

[(a) deleted]

- (b) requiring producers, or persons grading, dealing or trafficking in eggs as owners or agents, or concerned in the transport or having the custody of eggs, to furnish returns containing such information as the Board may consider necessary;
- (c) for enabling the Board or any person authorised by it to inspect any records or accounts relating to eggs or to inspect premises on which eggs are produced, stored, graded, packed, dried, pulped, or otherwise treated;

- (ca) licensing persons other than the Board to carry out the grading of eggs;
 - (d) for prescribing the duties, functions and conduct of registered agents, persons who are licensed to grade eggs or persons holding permits to buy eggs;
 - (e) the regulation and control of the supply, grading, treatment, processing, manufacture, storage, distribution, marketing, sale, purchase, use and consumption of eggs;
 - (f) the issue and cancellation of permits;
 - (g) defining the functions, authorities and duties of inspectors;
 - (h) any other matter which in the opinion of the Minister is incidental to carrying out the functions and duties imposed on the Board by this Act.
- (3) Regulations made under this Act may prescribe penalties not exceeding \$2 000 in respect of any contravention of any of the regulations.

[Section 39 amended by No. 19 of 1949 s. 5; No. 42 of 1954 s. 3; No. 37 of 1975 s. 17; No. 122 of 1987 s. 19; No. 20 of 1989 s. 3.]

40. Review

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from the coming into operation of section 10 of the *Marketing of Eggs Amendment Act 1995*, and in the course of such review the Minister shall consider and have regard to —
- (a) the effectiveness of the operations of the Board;
 - (b) the need for the continuation of the functions of the Board; and
 - (c) such other matters as appear to him to be relevant to the operations and effectiveness of this Act.

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- (2) The Minister shall prepare a report based on his review made under subsection (1) and shall, as soon as is practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

[Section 40 inserted by No. 122 of 1987 s. 20; amended by No. 40 of 1995 s. 10.]

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Notes

- ¹ This reprint is a compilation as at 22 February 2002 of the *Marketing of Eggs Act 1945* and includes the amendments made by the other written laws referred to in the following table². The table also contains information about any previous reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Marketing of Eggs Act 1945</i>	58 of 1945	5 Feb 1946	22 Mar 1946 (see s. 1 and <i>Gazette</i> 22 Mar 1946 p. 286)
<i>Marketing of Eggs Act Amendment Act 1949</i>	19 of 1949	24 Sep 1949	24 Sep 1949
<i>Marketing of Eggs Act Amendment Act (No. 2) 1949</i>	50 of 1949	26 Oct 1949	26 Oct 1949
<i>Marketing of Eggs Act Amendment (Continuance) Act 1950</i>	18 of 1950	29 Nov 1950	29 Nov 1950
<i>Marketing of Eggs Act Amendment Act 1951</i>	5 of 1951	20 Nov 1951	20 Nov 1951
<i>Marketing of Eggs Act Amendment Act 1954</i>	42 of 1954	8 Dec 1954	8 Dec 1954
<i>Marketing of Eggs Act Amendment Act 1955</i>	50 of 1955	9 Dec 1955	9 Dec 1955
<i>Marketing of Eggs Act Amendment (Continuance) Act 1958</i>	33 of 1958	11 Dec 1958	11 Dec 1958
Reprint of the <i>Marketing of Eggs Act 1945</i> approved 12 Jul 1960 in Volume 17 of Reprinted Acts (includes amendments listed above)			
<i>Marketing of Eggs Act Amendment Act 1960</i>	14 of 1960	6 Oct 1960	6 Oct 1960
<i>Marketing of Eggs Act Amendment Act 1965</i>	23 of 1965	1 Oct 1965	1 Oct 1965
<i>Marketing of Eggs Act Amendment Act 1969</i>	110 of 1969	25 Nov 1969	25 Nov 1969

Marketing of Eggs Act 1945

Short title	Number and year	Assent	Commencement
<i>Marketing of Eggs Act Amendment Act 1970</i> ³	114 of 1970	10 Dec 1970	10 Dec 1970
<i>Marketing of Eggs Act Amendment Act 1975</i>	37 of 1975	16 May 1975	20 Jun 1975 (see s. 2 and <i>Gazette</i> 20 Jun 1975 p. 1958)
Reprint of the <i>Marketing of Eggs Act 1945</i> approved 13 Aug 1975 (includes amendments listed above)			
<i>Marketing of Eggs Act Amendment Act 1977</i>	69 of 1977	28 Nov 1977	28 Nov 1977
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Marketing of Eggs Amendment Act 1987</i> ⁴	122 of 1987	31 Dec 1987	30 Dec 1988 (see s. 2 and <i>Gazette</i> 30 Dec 1988 p. 5083)
<i>Agriculture Legislation (Penalties) Amendment Act 1989</i> s. 3	20 of 1989	1 Dec 1989	15 Dec 1989 (see s. 2 and <i>Gazette</i> 15 Dec 1989 p. 4513)
<i>Marketing of Eggs Amendment Act 1995</i>	40 of 1995	24 Oct 1995	2 Mar 1996 (see s. 2 and <i>Gazette</i> 1 Mar 1996 p. 795)
<i>Statutory Corporations (Liability of Directors) Act 1996</i> s. 3	41 of 1996	10 Oct 1996	1 Dec 1996 (see s. 2 and <i>Gazette</i> 12 Nov 1996 p. 6301)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 76	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))

² Marginal notes in the *Marketing of Eggs Act 1945* referring to legislation of other jurisdictions have been omitted from this reprint.

³ Effective date of original provisions was 1 July 1971; see *Government Gazette* 19 March 1971 p. 846.

⁴ The *Marketing of Eggs Amendment Act 1987* s. 6(2) reads as follows:

“

- (2) The use of the name “Golden Egg Farms” by the Board generally or in any transaction carried out or purporting to have been carried out under the principal Act before the coming into operation of this Act is hereby declared to be and to always have been valid.

”

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
Board.....	5(1)
breeding fowl	32L(1)
commercial producer	5(1)
eggs	5(1)
fowl	32A
inspector.....	5(1)
keep.....	32A
license	32A
licensed collector	5(1)
poultry.....	5(1)
producer	5(1)
public notice.....	5(1)
pullet	32L(1)
registered agent	5(1)
sale	5(1)
sale by retail	5(1)
sell.....	5(1)
the appointed day	21(1)
week.....	34(2)