



Western Australia

Poultry Industry (Trust Fund) Act 1948

Compare between:

[23 Nov 2004, 01-b0-02] and [01 Feb 2005, 01-c0-06]

Poultry Industry (Trust Fund) Act 1948

An Act to authorise the establishment of a Trust Fund in relation to the Poultry Industry; to provide for the administration of that Fund, and the application of the moneys from time to time in that Fund, and for other purposes incidental thereto.

1. Short title

This Act may be cited as the *Poultry Industry (Trust Fund) Act 1948*, and shall come into operation on a day to be fixed by proclamation¹.

2. Severability

This Act shall be read and construed so as not to exceed the legislative power of the State, the intention being that where any enactment herein would but for this section be construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

3. Interpretation

In this Act, unless the context otherwise requires —

“Association” means Poultry Farmers’ Association of W.A.;

“Board” means The Western Australian Egg Marketing Board, as constituted under the *Marketing of Eggs Act 1945*;

“Committee” means The Poultry Industry Trust Fund Committee constituted under this Act;

“dealer” means any person who —

(a) purchases eggs from a producer wholesale for resale; or

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(b) receives eggs from a producer for sale wholesale on behalf of such producer; or

(c) being a producer, himself sells wholesale or retail eggs produced by him;

“eggs” means eggs of poultry;

“Fund” means The Poultry Industry Trust Fund established by this Act;

“Minister” means the Minister for Agriculture, or the Minister of the Crown from time to time acting as the Minister for Agriculture;

“producer” means a person who owns or controls 20 or more head of adult female poultry and sells all or any of the eggs produced thereby;

“poultry” means fowls and ducks;

“sale” includes barter or exchange.

[Section 3 amended by No. 63 of 1981 s. 4.]

4. Administration

Subject to the general direction and control of the Minister, this Act shall be administered by the chief executive officer ².

[Section 4 amended by No. 63 of 1981 s. 4.]

5. Poultry Industry Trust Fund Committee

(1) A Committee, to be called “The Poultry Industry Trust Fund Committee”, shall be constituted for the purposes of this Act.

(2) The Committee shall consist of 3 members, who shall be appointed by the Governor. Two of the members shall be persons who have been nominated by the Association and approved by the Minister, and the remaining member shall be a person representing the Department of Agriculture and nominated by the Minister.

- (3) The member representing the Department of Agriculture shall be the chairman of the Committee.
- (4) Notice of every appointment of a member of the Committee shall be published in the *Government Gazette*.
- (5) The Committee shall be a body corporate, with perpetual succession and a common seal.

6. Terms of office of members

The members of the Committee shall not hold office for a longer period than 3 years without re-appointment and, subject to due nomination, shall be eligible for re-appointment.

7. Quorum

Any 2 members of the Committee shall form a quorum thereof.

8. Chairman to preside. Majority decision to be sufficient

- (1) At all meetings of the Committee the chairman shall preside, if present, and, in his absence, one of the members present shall be appointed by the members who are present to be chairman of the meeting.
- (2) Whenever all the members of the Committee are present at a meeting and they are not unanimous as to any matter, such matter shall be decided by the majority of the votes, and the decision so arrived at shall be the decision of the Committee.
- (3) When only 2 members of the Committee are present and they are not unanimous as to any matter, no decision shall be made on the matter at that meeting, but further consideration thereof shall be adjourned until the next meeting of the Committee.

9. Acts of Committee not invalidated by vacancy

No act or proceeding of the Committee shall be invalid or prejudiced by reason only of the fact that at the time when the act or proceeding is done, taken, or commenced there is a

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vacancy in the office of any member, or by reason of the fact that the decision in regard thereto was arrived at by correspondence with the unanimous assent of the members.

10. Deputy member

The governor may at any time appoint persons to be deputy members of the Committee in case of illness or other incapacity or absence from the State of any member of the Committee, or a vacancy in the office of any member, to act during the illness, incapacity, or absence, or until the vacancy is filled.

11. Secretary, inspectors, and other officers

- (1) The chief executive officer² may appoint a secretary to the Committee and any inspectors and other officers who he is satisfied, on the information of the Committee, are necessary to enable the Committee to carry out its duties and functions.
- (2) Any officer employed in the Department of Agriculture shall be eligible for appointment under subsection (1).
- (3) Any person who in any way resists, interferes with, hinders, or obstructs any person so appointed in the exercise or discharge of any power or duty under this Act shall be guilty of an offence.

Penalty — \$2 000.

[Section 11 amended by No. 63 of 1981 s. 4; No. 20 of 1989 s. 3.]

12. Remuneration of Committee

The chairman and members of the Committee shall be entitled to such remuneration for their services and such travelling and other expenses as may be prescribed.

13. Power to require returns and particulars

- (1) The Committee may, by notice in writing under the hand of the chairman, given to any producer or dealer, require the producer or dealer to furnish in writing to the Committee such returns and

particulars in relation to his business as carried on by him under this Act as the Committee may deem necessary for the purposes of this Act, and the Committee may specify in the notice a time within which the returns and particulars shall be furnished.

(2) Any person who fails or refuses to comply with the requisitions of any such notice within the time limited by the notice, or who furnishes any untrue return or particulars, shall be guilty of an offence.

Penalty — \$2 000.

(3) The returns and particulars which may be required by the Committee under subsection (1) shall be in addition to any returns and particulars which producers and dealers are required to furnish in accordance with the regulations.

[Section 13 amended by No. 20 of 1989 s. 3.]

14. Entry and inspection

(1) Any member of the Committee and any inspector or officer of the Committee authorised in writing by the Committee to do so may inspect any books, accounts, registers, records, documents, or writings which are in the custody or control of any producer or dealer, and which relate to the business carried on by him, and may take notes, copies, or extracts of or from them.

(2) For the purposes of subsection (1), any member, inspector, or officer, may at any reasonable time enter any premises in which he believes any such books, accounts, registers, records, or writings are kept.

15. Poultry Industry Trust Fund

(1) For the purposes of this Act there shall be established a fund, to be called "The Poultry Industry Trust Fund", which shall be administered by the Committee.

(2) All moneys from time to time belonging to the Fund shall be credited to an account, to be called "The Poultry Industry Trust

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Fund Account", which shall be kept at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.

(3) The Fund shall consist of—

- (a) contributions made to the Fund under this Act; and
- (b) any money appropriated by Parliament for the purposes of this Act; and
- (c) penalties imposed upon convictions of offences against this Act, which are hereby declared to be payable to the credit of the Fund.

[Section 15 amended by No. 78 of 1995 s. 108; No. 49 of 1996 s. 64.]

16. Investment of moneys in the Fund

Any moneys standing to the credit of the Fund, which are not immediately required for the purposes of this Act, may, subject to the approval of the Minister, be invested by the Committee as trust funds may be invested under Part III of the *Trustees Act 1962*.

[Section 16 amended by No. 49 of 1996 s. 64; No. 1 of 1997 s. 18.]

17. Contributions to the Fund

- (1) Subject to this Act, every producer shall in every year contribute to the Fund in relation to the eggs produced by him for sale in that year.
- (2) All such contributions shall be paid to the Committee.
- (3) During such time as the *Marketing of Eggs Act 1945* is in operation and eggs produced by producers are under the disposition of the Board, the amount of the contribution shall be assessed in relation to the number of eggs which are produced by each producer and over which the Board exercises its powers of disposition pursuant to the provisions of that Act.

Such eggs of his own as the producer may use for incubation in connection with the production of chickens for use in his own business are exempt from the provisions of this section.

- (4) After the *Marketing of Eggs Act 1945* ceases to operate and the disposition of eggs by producers thereof is no longer under the control of the Board, the amount of the contribution shall be assessed in relation to the number of eggs from each producer obtained or received by the dealer for sale or export.
- (5) The rate of the contribution to be made by producers under this section shall be such rate as shall be declared from time to time by the Minister, on the recommendation of the Committee:

Provided that —

- (i) such rate of contribution shall not in any event exceed 4 cents in respect of every 30 dozen eggs, as ascertained by the Board, or in respect of every 30 dozen eggs sold or exported for sale by the dealer, as the case may be; and
- (ii) the liability of the producer to contribute to the Fund may be suspended at any time and from time to time by the Minister whenever the Committee is satisfied that the moneys standing to the credit of the Fund for the time being are sufficient for the purposes of this Act.

- (6) During such time as the *Marketing of Eggs Act 1945* is in operation and the eggs of producers are in the disposition of the Board, the Committee may request the Board, and it shall be lawful for the Board to pay to the Committee out of moneys collected from the producer or out of any moneys payable by the Board to any producer the amount of the contribution then payable by the producer to the Committee under this section, and the acknowledgment to the Board by the Committee of the amount so paid shall be a complete discharge to the Board as against the producer concerned in respect of the amount stated in the acknowledgment.

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- (7) After the *Marketing of Eggs Act 1945* ceases to operate, and the disposition of eggs by the producers thereof is no longer under the control of the Board, every dealer who obtains or receives eggs from a producer, and is liable to make to the producer any payment, or to account to the producer for any moneys in respect of the eggs so obtained or received by him, shall deduct out of the moneys payable by him to the producer or held by him to the credit of the producer, and pay to the Committee the amount of the contribution for which the producer is then liable under this section, and the acknowledgment by the Committee of the payment shall be a complete discharge to the dealer as against the producer in respect of the amount stated in the acknowledgment.
- (8) The amount of all contributions deducted by a dealer in accordance with the last preceding subsection shall, until paid by him to the Committee, be a debt owing by such dealer to the Committee, and shall be recoverable at the suit of the Committee from the dealer in any court of competent jurisdiction.
- (9) Any dealer who fails or neglects to deduct contributions from moneys payable by him to any producer, or held by him to the credit of any producer, in accordance with subsection (7), and any dealer who, having deducted contributions as required by that subsection, fails or neglects, or refuses, without reasonable excuse, to pay the contributions to the committee at the time or in the manner prescribed, shall be guilty of an offence.
Penalty — \$2 000.
- (10) Until such time as the amount of the contribution for which a producer is liable under this section is received by the Committee, either from the Board, or from a dealer, or from the producer himself, the amount of the contribution shall be a debt owing by the producer to the Committee, and shall be recoverable at the suit of the Committee from the producer in any court of competent jurisdiction.

- (11) If at any time the amount of any contribution received by the Committee in relation to the liability of a producer to contribute under this section is found to be in excess of the amount of the contribution for which the producer is then liable, the excess may remain in the Fund to the credit of such producer against future contributions which may become payable by him, or shall be refunded to the producer by the Committee out of the moneys standing to the credit of the Fund, as the producer may elect.
- (12) For the purposes of this section, reference in this section to the Board shall be read and construed as including any board or authority that may hereafter be substituted for the Board in carrying out the same or similar functions to those carried out by the Board pursuant to the provisions of the *Marketing of Eggs Act 1945*.

[Section 17 amended by No. 5 of 1951 s. 3; No. 113 of 1965 s. 8(1); No. 20 of 1989 s. 3; No. 49 of 1996 s. 64.]

18. Application of moneys in the Fund

- (1) The moneys standing to the credit of the Fund shall, in the first instance, be charged with the payment of the following expenses, namely: —
 - (a) The costs of the administration of this Act.
 - (b) The fees and allowances of the members of the Committee.
- (2) After payment of the expenses referred to in the last preceding subsection, and subject in every case to the approval in writing of the Minister, the moneys standing to the credit of the Fund may be used for all or any of the following purposes: —
 - (a) The payment of the whole or portion of the costs and expenses of measures taken to prevent or eradicate pests and such enzootic diseases, within the meaning of the *Stock Diseases (Regulations) Act 1968*, as the Governor may, by proclamation, declare to be diseases for the

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purposes of this Act affecting poultry and the eggs thereof.

- (b) The payment of compensation to producers in respect of the whole or portion of losses suffered by them as a result of measures taken to prevent or eradicate the pests and diseases aforesaid.
- (c) The payment of the costs of the promotion and encouragement of scientific research for the improvement of poultry and egg production, and of the transport of such eggs and poultry.
- (d) The provision of financial help for the Association and its branches in the carrying out of its activities for the benefit of producers.
Provided that such financial help shall only be granted when recommended by the Committee and approved by the Minister; and
- (e) Any other purposes which, in the opinion of the Minister, will promote and encourage, or extend relief to, the poultry industry.

[Section 18 amended by No. 15 of 1969 s. 2; No. 49 of 1996 s. 64.]

19. 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 Committee and its operations.
- (2) Notwithstanding the provisions of the *Financial Administration and Audit Act 1985*, the financial year of the Committee shall end on 31 July.

[Section 19 inserted by No. 98 of 1985 s. 3.]

[20-23. Repealed by No. 98 of 1985 s. 3.]

24. Offences

Any contravention of this Act, or of any regulations made under this Act, whether by act or omission, shall be an offence.

25. General penalty

The penalty for any offence against this Act or the regulations for which no penalty is expressly provided, shall be a fine not exceeding \$2 000.

[Section 25 amended by No. 20 of 1989 s. 3.]

26. Procedure

Proceedings for offences against this Act or the regulations shall be taken and disposed of summarily under the provisions of the *Justices Act 1902*.

27. Regulations

The Governor may make regulations not inconsistent with this Act prescribing all 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 this Act.

Notes

¹ This is a compilation of the *Poultry Industry (Trust Fund) Act 1948* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Poultry Industry (Trust Fund) Act 1948</i>	28 of 1948	9 Dec 1948	15 Aug 1949 (see s. 1 and <i>Gazette</i> 12 Aug 1949 p. 1979-80)
<i>Poultry Industry (Trust Fund) Act Amendment Act 1951</i>	5 of 1951	12 Oct 1951	12 Oct 1951
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<i>Poultry Industry (Trust Fund) Act Amendment Act 1969</i>	15 of 1969	6 May 1969	6 May 1969
<i>Acts Amendment (Statutory Designations) and Validation Act 1981</i> s. 4	63 of 1981	13 Oct 1981	13 Oct 1981
<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>Agricultural 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>Sentencing (Consequential Provisions) Act 1995</i> Pt. 67	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Trustees Amendment Act 1997</i> s. 18	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
Reprint of the <i>Poultry Industry (Trust Fund) Act 1948</i> as at 15 Nov 2002 (includes amendments listed above)			
<u>This Act was repealed by the <i>Pig, Potato and Poultry Industries (Compensation Legislation) Repeal Act 2004</i> s. 5 (No. 40 of 2004) as at 1 Feb 2005 (see s. 2 and <i>Gazette</i> 7 Jan 2005 p. 53)</u>			

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in

this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and Year	Assent	Commencement
<i>Pig, Potato and Poultry Industries (Compensation Legislation) Repeal Act 2004</i> Pt. 3 ³	40 of 2004	3 Nov 2004	To be proclaimed (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141 ⁴	59 of 2004	23 Nov 2004	To be proclaimed (see s. 2)

² Under the *Acts Amendment (Public Service) Act 1987* s. 31(1)(f) a reference in a written law to “Permanent Head” is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to “chief executive officer”. This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

³ On the date as at which this compilation was prepared, the *Pig, Potato and Poultry Industries (Compensation Legislation) Repeal Act 2004* Pt. 3 had not come into operation. It reads as follows:

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Part 3 — Transitional provisions

6. Definitions

In this Part —

“**Agricultural Produce Commission Account**” means the account referred to in section 7(2) of the *Agricultural Produce Commission Act 1988*;

“**commencement day**” means the day on which this Act comes into operation;

“**Commission**” means the Agricultural Produce Commission established under section 4 of the *Agricultural Produce Commission Act 1988*;

“**former accounts**” means —

(a) the Pig Industry Compensation Fund established under section 13 of the *Pig Industry Compensation Act 1942*;

(b) the Potato Growing Industry Trust Fund established under section 19 of the *Potato Growing Industry Trust Fund Act 1947*; and

(c) the Poultry Industry Trust Fund established under section 15 of the *Poultry Industry (Trust Fund) Act 1948*;

“former committees” means —

- (a) the Potato Growing Industry Trust Fund Advisory Committee constituted under section 6 of the *Potato Growing Industry Trust Fund Act 1947*; and
- (b) The Poultry Industry Trust Fund Committee constituted under section 5 of the *Poultry Industry (Trust Fund) Act 1948*;

“repealed Acts” means the Acts repealed under Part 2.

7.

Interpretation Act not affected

Nothing in this Act is to be construed so as to limit the operation of the *Interpretation Act 1984*.

8.

Members cease to hold office

On the commencement day the members of the former committees cease to hold office.

9.

Compensation claims made before repeals

Despite Part 2, an application for compensation under a repealed Act not fully dealt with before the commencement day is to be dealt with by the Commission —

- (a) under that Act as if the Act had not been repealed; and
- (b) for that purpose, any reference in that repealed Act to a former committee is to be read and have effect on and after the commencement day as if it were a reference to the Commission.

10.

Funds in former accounts

- (1) Any moneys standing to the credit of a former account immediately before the commencement day are to be credited to the Agricultural Produce Commission Account to be applied in the payment of —

- (a) compensation payable on an application referred to in section 9 made under the Act which established the former account; and
 - (b) any liabilities of the former account which arose before the commencement day,

and any balance remaining is to be applied by the relevant producers’ committee for the purposes of carrying out its functions under the *Agricultural Produce Commission Act 1988*.

- (2)

In this section —

“relevant producers’ committee”, in relation to a former account, means the producers’ committee, as defined in section 3(1) of the *Agricultural Produce Commission Act 1988*,

established in relation to the agricultural produce relevant to the former account.

11. Moneys payable to Agricultural Produce Commission Account

The Agricultural Produce Commission Account is to be credited with any money that became payable to a former account before the commencement day and that is paid after that day.

12. References to former committees and former accounts

If in an agreement, instrument or other document there is a reference to —

- (a) a former account, that reference is, unless the context otherwise requires, to be read and have effect on and after the commencement day as if it were a reference to the Agricultural Produce Commission Account; or
- (b) a former committee, that reference is, unless the context otherwise requires, to be read and have effect on and after the commencement day as if it were a reference to the Commission.

13. Proceedings and remedies

On and after the commencement day —

- (a) the Commission is a party to any proceedings by or against a former committee commenced before that day; and
- (b) any proceedings or remedy that might have been commenced by, or available against or to, a former committee may be commenced by, and are available against or to, the Commission.

14. Records to be delivered to Commission

On the commencement day the Commission is to take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of —

- (a) the former accounts; and
- (b) the former committees.

15. Financial reporting

- (1) Section 65A of the FAA Act applies in relation to the preparation and submission of a final report in respect of a former committee as if —
 - (a) references in that section to a department were references to the former committee; and

(b) references in that section to provisions of sections 62 to 65 of the FAA Act were references to the equivalent provisions of sections 66 to 70 of that Act,

except that the period to which the final report is to relate is the final period, the references in sections 66(1), 68, and 70(1) to the end of the financial year are to be read as references to the end of the final period and the former committee is to be taken to be appointed as the reporting officer under section 65A(2).

(2) If at the commencement day, any duty imposed by Part II Division 14 of the FAA Act on the accountable authority of a former committee has not been complied with for any financial year that expired before the commencement day, that duty subsists and is to be performed by the former committee.

(3) The time within which the former committee is to perform a duty referred to in subsection (2) is extended until the end of the day that is 2 months after the commencement day, but this subsection does not prevent the time from being extended again under section 70 of the FAA Act.

(4) Despite the repeals effected under Part 2, each former committee continues in existence for the purposes of this section and is entitled to receive from the Commission and its staff such assistance as it may require for that purpose.

(5) In this section —
“**FAA Act**” means the *Financial Administration and Audit Act 1985*;
“**final period**” in relation to the former committee —
(a) under the *Potato Growing Industry Trust Fund Act 1947*, means the period starting on 1 July last preceding the commencement day;
(b) under the *Poultry Industry (Trust Fund) Act 1948*, means the period starting on 1 August last preceding the commencement day.

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⁴ On the date as at which this compilation was prepared, the *Courts Legislation Amendment and Repeal Act 2004* s. 141, which gives effect to Sch. 1 had not come into operation. It reads as follows:

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141. Various Acts amended

Each Act listed in Schedule 1 is amended as set out in that Schedule immediately below the short title of the Act.

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Schedule 1 cl. 125 reads as follows:

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Schedule 1 — Amendments to various Acts

125. *Poultry Industry (Trust Fund) Act 1948*

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