

MARKETING OF EGGS.

2° and 3° GEO. VI., No. LI.

No. 51 of 1938.**AN ACT to make provision for the marketing, sale and disposal of Eggs, and for other relative purposes.**

[Assented to 31st January, 1939.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title
and com-
mencement.

1. This Act may be cited as the *Marketing of Eggs Act*, 1938, and shall come into operation on a day to be fixed by proclamation.

Interpreta-
tion.

2. (1) In this Act, subject to the context—

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

“Eggs” means the eggs of fowls or ducks, and includes egg pulp.

“Poultry” means fowls and ducks.

“Producer” means a person who keeps more than seventy-five head of female poultry, with a view to making a profit by the sale of the eggs or any of the eggs produced thereby.

“Minister” means the Minister for Agriculture.

“Public notice” means a notice published in the *Gazette* and in a newspaper published at Perth.

(2) 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 subsection, 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.

3. (1) The Governor may, whenever requested so to do by a petition signed by not less than fifty producers carrying on the business of producing eggs, issue a proclamation fixing the day for the taking of a poll of the producers so carrying on business in Western Australia, on the question whether a Board shall be constituted. The issue of such proclamation shall be conclusive evidence of the validity and regularity of the petition.

Appointment
and constitution
of the Board.

(2) If on the taking of such poll more than three-fifths of the votes polled are in favour of the constitution of a Board, the Governor may by a subsequent proclamation declare that a Board to be known as "The Western Australian Egg Marketing Board" shall be constituted, and may thereby appoint a day for the election by producers of the elective members who shall sit on the Board.

(3) No producer shall be entitled to join in any such petition, or take part in any such poll as aforesaid, or in any election under this Act, unless he is of the full age of twenty-one years and be a natural born or a naturalised British subject.

(4) The number of elective members who shall sit on the Board shall be two, both of whom shall be producers.

(5) The Board shall consist of the members elected under this section and of three additional members to be nominated by the Governor in the prescribed manner, one of whom shall represent the consumers and one at least of such additional members shall be a person of mercantile and commercial experience.

(6) Provision for the expenses of any such poll as aforesaid and for the first election of the members of the Board shall be made by the signatories of the petition pursuant to which the poll was ordered; but the Board

shall, on receipt of a notice in writing signed by the Minister specifying such expenses, reimburse such signatories out of the proceeds of sales of eggs to be made by the Board as hereafter in this Act provided.

(7) Regulations made under this Act may provide for—

- (a) the forms of petitions;
- (b) the compilation of lists of persons entitled to vote at polls and elections, the conduct of polls and elections, and the manner of voting thereat, and the ascertainment and announcement of the result thereof;
- (c) the qualifications (subject to subsections (4) and (5) of this section) and tenure of office of members of the Board;
- (d) the holding of periodical elections and the number of members to be elected at any periodical election;
- (e) the vacation of office by members of the Board, and the filling of casual vacancies by election or nomination, as the case may require, and (subject to the conditions laid down in section thirteen) the dissolution of the Board.

Acquisition of
eggs by
Board.

4. (1) The Governor may at any time, on the application of the Board, provide and declare by proclamation that the property in all eggs belonging to producers shall forthwith, upon the date of publication of the proclamation, or on or from some other date specified therein, be divested from the producers thereof and become absolutely vested in and be the property of the Board, and that any eggs belonging to producers thereafter coming into existence within a time specified in the proclamation shall become the property of the Board, and may by such proclamation make such further provision as will enable the Board effectively to obtain possession of such eggs, and to deal with the same, as may be deemed necessary or convenient, in order to give full effect to the objects and purposes for which the Board has been constituted.

(2) The effect of the proclamation shall be to vest the property in such eggs in the Board in accordance with

its tenor, freed from all mortgages, charges, liens, pledges, interests and trusts affecting the same, and the rights and interests of every person in or against such property shall be deemed to be converted into a claim to or against the amount to be paid therefor in accordance with the provisions of this Act.

(3) Such proclamation shall not affect or extend to any eggs which are the subject of trade or commerce between the States of the Commonwealth, or as are required by the producers thereof for the purposes of trade or commerce between the States, or intended by the producers thereof to be used for such trade or commerce.

5. The Board shall be a body corporate, with perpetual succession and a common seal, and may sue and be sued, and hold real and personal property under the name of the Western Australian Egg Marketing Board.

Board to be a body corporate.

6. The Board shall not be deemed to represent the Crown for any purpose whatsoever.

Board not to represent Crown.

7. The members of the Board shall be paid such remuneration and allowed such expenses from the funds of the Board as may be fixed by the Governor.

Payment of members.

Provided that the remuneration to be paid to the members shall not exceed, in the case of the chairman, two guineas for each meeting of the Board attended by him and in the case of a member the sum of one guinea for each meeting attended by him together with, in either case, any travelling or hotel expenses properly incurred for the purpose of attending a meeting of the Board or while wholly engaged on the business of the Board.

8. No proceedings of the Board, and no act done by or on behalf of the Board, shall be invalidated by reason of any defect in the appointment or election of the chairman or any member of the Board, or of the chairman or any member being disqualified, or by reason of there being any vacancy in the number of the members of the Board.

Informality or vacancy not to invalidate proceedings.

9. (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.

Powers of Board, how exercised.

(2) The chairman (who shall be elected by the members of the Board in the prescribed manner) shall have a vote, and, if the numbers are equally divided, he shall have a second or casting vote.

If at any time a chairman is not elected as herein provided the Governor may appoint a member to be chairman.

(3) Three members of the Board shall form a quorum.

Dissolution of Board.

10. (1) Upon the request of not less than fifty producers entitled to take part in any election under this Act and carrying on the business of production within the State, the Governor may issue a proclamation fixing a day for the taking of a poll of the producers qualified to take part in any such election and so carrying on business on the question whether the Board shall be dissolved. The issue of the proclamation shall be conclusive evidence of the validity of the request.

(2) No such poll shall be directed within two years after the constitution of the Board or within two years after any similar poll upon which a similar question has been answered in the negative.

(3) If at any such poll three-fifths of the votes polled are in favour of the dissolution of the Board the Governor may by proclamation declare that the Board shall be wound up and thereupon the Board shall proceed to wind up its affairs wholly and shall exercise its powers and authorities for that purpose and no other.

(4) When the Governor is of the opinion that the affairs of the Board are wholly wound up he may by proclamation dissolve the Board whereupon all moneys, eggs and other assets whatsoever held by the Board shall become the property of His Majesty and shall be dealt with as the Governor directs.

All eggs to be delivered to Board.

11. (1) When a proclamation has been issued under section seven, then all eggs to which it extends shall, save as hereinafter provided, be delivered by the producers to the Board, or its authorised agents, within such times, at such places, and in such manner as the Board may by public notice, or in a particular case in writing, direct.

(2) Any person who, save as hereinafter provided, sells or delivers any such eggs to, or buys or receives any

such eggs from, any person other than the Board, shall be liable on summary conviction to a penalty not exceeding Fifty pounds: Provided that this subsection shall not apply to the sale, delivery, purchase, or receipt of any eggs which have been tendered to and the receipt of which has been refused by the Board.

(3) The Board may, in such cases and on such terms and conditions as may be prescribed, exempt (either generally or in any particular case) from the operation of this section—

- (a) such small producers as the Board 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 other sales, purchases, or transactions as may be prescribed,

and may at any time revoke such exemption.

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

(5) Eggs *bona fide* produced and retained by the producer for use by him for hatching purposes only or for sale by him as settings or parcels of eggs for hatching and for no other purpose shall be exempt from the operation of this section.

(6) The Board shall not refuse to accept from any producer any such eggs which are of the prescribed quality or which conform to the prescribed standard: Provided that delivery is tendered in accordance with this Act within such reasonable time as may be fixed by the Board.

(7) As soon as practicable after the receipt of any eggs, the Board shall issue to the producer a certificate in the prescribed form: Provided that the Board, if it has received notice of any mortgage, charge, lien, encumbrance, or contract affecting such eggs, may, in its discretion, refuse or withhold the issue of such certificate.

(8) The Board may make or arrange for advances on account of eggs delivered, and any payment made on account of such eggs may be made at such time or times and on such terms and conditions and in such manner as the Board may think fit.

Contracts for
sale of eggs.

12. (1) Every contract which is made within or outside the State in relation to any eggs to which any proclamation under section seven extends (and not being a contract solely dealing with eggs pursuant to an exemption under the preceding section, or a contract made or entered into before the issue of the proclamation and relating to chilled eggs), whether made before or after the issue of the proclamation, shall, insofar as it relates to the sale of such eggs for sale in or out of the State, if so directed by the Board by notice published in the *Gazette*, be null and void as from the date when it was made, except insofar as it may have been completed by delivery before the publication of such notice, and for the purposes of this section every such contract shall be deemed to be severable.

(2) Any transaction or contract with respect to any eggs which are the subject-matter of any contract declared by this section to be void shall also be void; and any money paid in respect of any contract or part of a contract hereby made void, or of any such transaction as aforesaid, shall, to the extent to which such contract or transaction is made void, be repaid.

Liens, mortgages,
etc.

13. (1) Every person delivering any eggs to the Board shall give notice of any lien, mortgage, charge, encumbrance or other claim affecting the same.

Penalty: Ten pounds.

(2) 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; but he may adopt the delivery to the Board as being made wholly or partly on his account, as the case may be, and claim accordingly the payment or a just proportion of the payments to be made in respect thereof.

Marketing
powers, etc.

14. Subject to this Act, a Board may sell, or arrange for the sale of any eggs delivered to it, and do all acts, matters, and things necessary or expedient in that behalf, and in particular, but without limiting the generality of the foregoing powers, may—

(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 over-sea ships' stores, or for consignment to other countries or States.

15. (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 of the eggs delivered to the Board, in respect to the eggs delivered by him, on the basis of the net proceeds of the sale of all the eggs of the same quality or standard delivered to and sold by the Board during or covering such periods of time as may be prescribed, and the proportion of such eggs so delivered by such producer during such period.

Payment to producer, etc.

(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.

16. (1) Where the Board has in good faith and without negligence made any payment—

Non-liability of Board for payments made in good faith without negligence.

- (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.

Accounts of Board.

17. The Board shall cause true and regular accounts to be kept, which shall be audited by a chartered accountant (not being a member of the Board) approved by the Minister.

Expenditure charge on proceeds of eggs.

18. 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.

Offences.

19. Any offence against this Act for which no other penalty is provided shall be punishable on summary conviction by a fine not exceeding five pounds.

Regulations.

20. (1) The Governor may make regulations under this Act with respect to the matters mentioned in subsection (3) of section five and the Board may make regulations 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.

(2) The power hereby given to the Board shall (without limiting its generality) be deemed to include power to make regulations—

- (a) empowering the Board to institute prosecutions under the Agricultural Products Act, 1929, in respect of eggs;
 - (b) requiring producers, or persons 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) requiring producers to register and re-register with the Board at the prescribed times their names and such other particulars as are prescribed, and requiring a producer on ceasing production to notify the Board thereof;
 - (d) for ascertaining whether eggs are of the prescribed quality or standard and prescribing a quality or standard therefor and for an increase or decrease in the amount otherwise payable to any producer or other person for eggs delivered by him or any other person to the Board or to an authorised agent of the Board according to the quality or standard of the eggs, and regulating the transport, treatment, grading, branding, packing, storage, marketing, selling, exporting and delivery of eggs.
- (3) Regulations made under this Act may prescribe penalties not exceeding twenty pounds in respect of any contravention of any of the regulations.