Queensland

EGG INDUSTRY (RESTRUCTURING) BILL 1993

Queensland

EGG INDUSTRY (RESTRUCTURING) BILL 1993

TABLE OF PROVISIONS

PART 4—THE COMPULSORY MARKETING SCHEME

Division 1—Application and vesting of eggs

Division 2—Information to be given by producers

Division 3—Delivery of vested eggs

Division 4—Exemptions

Division 5—Egg pools

PART 5—THE QUEENSLAND EGG INDUSTRY MANAGEMENT AUTHORITY

Division 1—The Authority and its general powers

Division 2—Ministerial direction

Division 3—Composition of the Authority

PART 7—REVIEW OF ADMINISTRATIVE DECISIONS

PART 8—ENFORCEMENT MATTERS

Division 1—Authorised persons

Division 2—Powers of authorised persons in relation to places and vehicles

Division 3—Other enforcement powers of authorised persons

Division 4—Other enforcement matters

1993

A BILL

FOR

An Act about the Queensland egg industry

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

***Clause*1.** This Act may be cited as the *Egg Industry (Restructuring) Act 1993*.

Commencement

***Clause*2.** This Act commences on a day to be fixed by proclamation.

Objects

***Clause*3.** The objects of this Act are to—

(a) restructure the Queensland egg industry; and

(b) provide for the transfer of the assets and liabilities of the Egg Marketing Board and the Central Queensland Egg Marketing Board to a company formed to take over the marketing functions of the boards and to assume a general responsibility for the marketing of eggs produced in the State; and

(c) provide for the equitable distribution of shares in the capital of the company among egg producers, thus enabling producers to take part in the affairs of the company; and

(d) provide for a compulsory marketing scheme, to be administered by the company, to ensure as far as possible the equitable distribution of profits from the marketing of eggs among producers; and

(e) provide for the administration of a hen quota system to regulate the keeping of hens for the commercial production of eggs.

Definitions

***Clause*4.** In this Act—

"authorised person" means an authorised person appointed under Part 8, Division 1;

"Authority" means the Queensland Egg Industry Management Authority;

"Central Queensland" means the part of the State for which CQEMB was established;

"Company" means Australian Quality Egg Farms Limited (A.C.N. 060702034);

"compulsory marketing scheme" means the scheme for the vesting, delivery and sale of eggs established under Part 4;

"Council" means the Queensland Egg Industry Council;

"Court" in Part 7 means Magistrates Court;

"CQEMB" means the Central Queensland Egg Marketing Board established under the *Primary Producers' Organisation and Marketing Act 1926*;

"dissolution date" means the date fixed by regulation for the dissolution of the former egg marketing authorities;

"eggs" means hen eggs, and includes products derived from hen eggs and consisting substantially of egg solids, other than products excluded by regulation from this definition;

"EMB" means the Egg Marketing Board established under the *Primary Products Pools Act 1922*, and continued in existence as a commodity board under the *Primary Producers' Organisation and Marketing Act 1926*;

"Far North Queensland" means the part of the State consisting of the areas (as existing on 1 September 1993) of—

(a) the City of Cairns; and

(b) the Shires of Atherton, Cardwell, Douglas, Eacham, Herberton, Johnstone, Mareeba and Mulgrave;

"former egg marketing authorities" means CQEMB and EMB;

"hen" means a bird of the species *Gallus gallus* var. *domesticus*;

“industry” means the egg industry;

“Mid-North Queensland” means the part of the State consisting of the areas (as existing on 1 September 1993) of—

(a) the cities of Townsville, Charters Towers and Thuringowa; and

(b) the Shires of Bowen, Burdekin, Dalrymple, Hinchinbrook and Whitsunday;

“obstruct” means—

(a) obstruct, hinder or resist; or

(b) attempt to obstruct, hinder or resist;

“over-quota eggs” has the meaning given by section 5 (Over-quota eggs);

“person in control of a vehicle” includes—

(a) the driver of the vehicle; and

(b) the person in command of the vehicle; and

(c) the person who appears to be in control or command of the vehicle;

“place” includes land and premises;

“premises” includes—

(a) a building or other structure or part of a building or other structure; and

(b) land where a building or other structure is situated;

“producer” means a person who carries on a business involving the commercial production of eggs;

“public notice” means a notice published in a newspaper circulating throughout the State;

“quota” means a licence authorising a producer to keep hens for the commercial production of eggs;

“quota lease” means an arrangement under which a producer transfers a right to keep hens for the commercial production of eggs on the basis that the right will later revert to the transferor;

“quota number” means the number of hens that a producer is authorised by a quota to keep for the commercial production of eggs;

“share distribution scheme” means the scheme for distributing redeemable preference shares among producers prepared and approved under Division 4 of Part 2;

“South Queensland” means the part of the State for which EMB was established;

“State quota” has the meaning given by section 69 (State quota);

“transfer date” means a date fixed by regulation as the transfer date;

“vehicle” includes an aircraft and a boat.

Over-quota eggs

***Clause*5.(1)** If, during a particular period, a quantity of eggs produced by a producer’s hens is more than the quantity worked out under subsection (2) (the producer’s **“production quota”**), the quantity over is **“over-quota eggs”**.

(2) A producer’s production quota for a particular period is worked out by multiplying the producer’s quota number by a quantity decided from a scale prescribed by regulation.

PART 2—THE COMPANY

Division 1—Special provisions about the Company’s board

Chairperson

***Clause*6.(1)** The chairperson of the board of directors of the Company must be a person appointed by the Governor in Council.

(2) The term of appointment is as decided by the Governor in Council, but may not extend beyond 31 December 1998.

(3) The chairperson ceases to hold office if the chairperson—

(a) resigns by signed notice given to the Minister; or

(b) completes a term of office and is not reappointed; or

(c) is convicted of an indictable offence or an offence against this Act; or

(d) is removed from office by the Governor in Council under subsection (4).

(4) The Governor in Council may remove the chairperson from office if the chairperson—

(a) engages in misbehaviour; or

(b) becomes incapable of performing the duties of the chairperson because of physical or mental incapacity; or

(c) is incompetent; or

(d) does anything that, in the Governor in Council's opinion, is a reasonable and sufficient justification for removal from office.

(5) The chairperson may be removed from office only under this section.

Functions of the chairperson

***Clause*7.(1)** The functions of the chairperson of the Company are—

(a) to report to the Minister on the operations of the Company and its financial position; and

(b) to report to the Minister on any significant operational problems encountered by the Company; and

(c) to report to the Minister on any matter on which the Minister requests a report.

(2) A report may be made under subsection (1) without breach of any fiduciary duty or duty of confidence.

(3) The duties imposed by this section are in addition to the duties that the chairperson of the Board of the Company has apart from this section.

Statutory director

***Clause*8.(1)** Apart from the chairperson, another director of the Company (the **"statutory director"**) must be a person appointed by the Governor in Council.

(2) A person is eligible for appointment as the statutory director of the Company if the person—

(a) is an officer of the department with extensive experience of the egg industry; or

(b) has qualifications and experience in public administration, commodity marketing, business administration or financial administration.

(3) The term of appointment is as decided by the Governor in Council, but may not extend beyond 31 December 1998.

(4) The statutory director ceases to hold office if the statutory director—

(a) resigns by signed notice given to the Minister; or

(b) completes a term of office and is not reappointed; or

(c) is convicted of an indictable offence or an offence against this Act; or

(d) is removed from office by the Governor in Council under subsection (5).

(5) The Governor in Council may remove the statutory director from office if the statutory director—

(a) engages in misbehaviour; or

(b) becomes incapable of performing the duties of the statutory director because of physical or mental incapacity; or

(c) is incompetent; or

(d) does anything that, in the Governor in Council's opinion, is a reasonable and sufficient justification for removal from office.

(6) The statutory director may be removed from office only under this section.

Functions of statutory director

***Clause*9.(1)** The statutory director must report to the Minister, as and when required by the Minister, on questions affecting the operations or performance of the Company.

(2) A report may be made under subsection (1) without breach of any fiduciary duty or duty of confidence.

(3) The duty imposed by this section is in addition to the duties that the statutory director has, apart from this section, as a director of the Company.

Disclosure of interests

***Clause*10.(1)** This section applies to a director of the Company if—

(a) the director has a direct or indirect financial interest in an issue being considered, or about to be considered, by the Company's board of directors (other than an interest the director has in common with producers generally, a substantial class of producers or some other substantial class); and

(b) the interest could conflict with the proper performance of the director's duties about the consideration of the issue.

(2) As soon as practicable after the relevant facts come to the director's knowledge, the director must disclose the nature of the interest to a meeting of the board.

(3) The disclosure must be recorded in the minutes of the board of directors and the director must not, without the Board's approval—

(a) be present when the board considers the issue; or

(b) take part in a decision of the board about the issue.

(4) Another director who also has a direct or indirect financial interest in the issue must not—

(a) be present when the board is considering its decision to give an approval mentioned in subsection (3); or

(b) take part in making the decision to give the approval.

Division 2—The Company's constituent documents

The Company's memorandum and articles

***Clause*11.(1)** The Company's memorandum and articles must be consistent with this Act.

(2) If there is any inconsistency between this Act and the memorandum and articles of the Company, this Act prevails and the memorandum and articles are void to the extent of the inconsistency.

Division 3—Transfer of assets and liabilities of the former egg marketing authorities to the Company

Transfer of assets and liabilities

***Clause*12.(1)** The assets and liabilities of the former egg marketing authorities are transferred to the Company on the transfer date and become assets and liabilities of the Company.

(2) In consideration of the transfer, the Company must issue to each former egg marketing authority redeemable preference shares in accordance with the share distribution scheme.

(3) The **"net value of the transferred assets"** of a former egg marketing authority is the amount by which the market value of its assets exceeds its liabilities as at the transfer date.

(4) The net value of the transferred assets is to be decided by agreement between the Company and the former egg marketing authority or, in default of agreement, by the Minister on the basis of professional advice.

(5) If the net value of the transferred assets of a former egg marketing authority is decided by the Minister under subsection (4), the authority must pay costs reasonably incurred by the Minister in obtaining professional advice on which to base the decision.

(6) Although the transfer takes effect by force of this section—

(a) instruments of transfer between the former egg marketing authorities and the Company must be executed and, if appropriate, registered as if the transfer were made by the former egg marketing authorities on sale of their respective undertakings to the Company; and

(b) the instruments attract stamp duty as if they were transfers on sale; and

(c) the Company is liable for the costs of preparing, stamping and registering the instruments.

Continuity of proceedings

***Clause*13.(1)** The transfer of assets and liabilities cannot give rise to a claim for breach of contract or breach of another legal or equitable obligation, nor can it be used as a ground for terminating a contract or other instrument or exercising another legal or equitable remedy.

(2) A proceeding by or against a former egg marketing authority that was uncompleted at the transfer date may be continued by or against the Company.

(3) A right of action by or against a former egg marketing authority becomes a right of action by or against the Company.

Division 4—Share distribution scheme

Share distribution scheme

***Clause*14.** A scheme for distributing redeemable preference shares in the Company among producers is to be prepared and approved by regulation.

Classes of producers

***Clause*15.(1)** Producers are, for the purposes of the share distribution scheme, divided into 5 classes—

(a) Central Queensland producers; and

(b) Far North Queensland producers; and

(c) Mid-North Queensland producers; and

(d) South Queensland producers; and

(e) independent producers.

(2) In this Part—

"Central Queensland producers" are the producers who, on the transfer date, were carrying on business in Central Queensland; and

"Far North Queensland producers" are the producers who, on the transfer date—

(a) were carrying on business in Far North Queensland; and

(b) were shareholders in Fresha Products (FNQ) Pty Ltd; and

"independent producers" are the producers who are not in any other class established by this section; and

"Mid-North Queensland producers" are the producers who, on the transfer date—

(a) were carrying on business in Mid-North Queensland; and

(b) were shareholders in Fresha Products (NQ) Pty Ltd; and

"South Queensland producers" are the producers who, on the transfer date, were carrying on business in South Queensland.

Determination of notional value per quota hen

***Clause*16.(1)** The share distribution scheme is to provide for determination of a notional value per quota hen for each class of producers.

(2) The notional value per quota hen is to be worked out in the following way—

(a) for South Queensland producers, the notional value per quota hen is to be worked out (subject, however, to any provision of the scheme providing for a different basis of calculation) by dividing the net value of the assets transferred from EMB by the total of the quota numbers of all South Queensland producers as at the transfer date;

(b) for Central Queensland producers, the notional value per quota hen is to be worked out (subject, however, to any provision of the scheme providing for a different basis of calculation) by dividing the net value of the assets transferred from CQEMB by the total of the quota numbers of all Central Queensland producers as at the transfer date; and

(c) for Mid-North Queensland producers, Far North Queensland producers and independent producers, the respective notional values per quota hen are to be worked out on a basis set out in the share distribution scheme.

Number of shares to be offered for subscription

***Clause*17.(1)** The number of shares for which a producer is entitled to subscribe under the share distribution scheme is to be worked out (subject, however, to the provisions of the scheme) by multiplying the producer's quota number, as at the transfer date, by the number of shares per quota hen decided under subsection (2).

(2) The number of shares per quota hen is a number equivalent to the highest notional value per quota hen for any class of producers expressed in dollars.

Example—

Suppose that the highest notional value per quota hen for any class of producers is $9.25. In that case, the number of shares per quota hen is 9.25.

(3) The shares to which South Queensland producers are entitled under the share distribution scheme are to be issued to EMB in consideration of the transfer of assets under Division 3.

(4) The shares to which Central Queensland producers are entitled under the share distribution scheme are to be issued to CQEMB in consideration of the transfer of assets under Division 3.

(5) The shares to which Mid-North Queensland producers and Far North Queensland producers are entitled under the share distribution scheme are to be issued to EMB so that they may be distributed by EMB's administrator, in accordance with the scheme, among Mid-North Queensland producers and Far North Queensland producers.

(6) If a producer's quota number, as at the transfer day, is affected by a quota lease, the lease must be ignored, and the producer's quota number decided as if there had been no transfer of rights under the quota lease.

Extent to which shares are to be paid-up

***Clause*18.(1)** The shares issued for subscription, under the share distribution scheme, by producers of the class having the highest notional value per quota hen are to be fully paid redeemable preference shares with a face value of $1.

(2) The shares issued for subscription, under the share distribution scheme, by any other class of producers are to be paid-up on issue to an extent reflecting the ratio between the notional value per quota hen for the class of producers concerned and the highest notional value per quota hen for any class of producers.

Example—

Suppose that the notional value per quota hen for the relevant class of producers is $1.85 and the highest value per quota hen for any class of producers is $9.25 (that is, an amount 5 times as much). In that case, the shares issued for subscription by the producers of the relevant class are to be paid up to the extent of $0.20.

Exception related to recent acquisition of quotas

***Clause*19.(1)** The purpose of this section is to avoid inequities between producers by ensuring that if a producer's quota number is wholly or partially attributable to the recent acquisition of a quota or portion of a quota from a producer in another region, the acquired quota or portion of a quota will not, in consequence of the acquisition, confer more favourable, or less favourable, rights to shares in the capital of the Company under the share distribution scheme.

(2) If the quota number of a producer is attributable to the acquisition since 1 September 1993 of a quota or part of a quota from a producer of some other class, then, for the purpose of the share distribution scheme, the producer must be treated (to the appropriate extent if the producer's quota number is not wholly attributable to the acquisition) as if the producer were of the same class as the producer from whom the quota or portion of a quota was acquired.

Division 5—Administration of former egg marketing authorities and distribution of shares in the Company

Administration of former egg marketing authorities after transfer date

*Clause*20.**(1)** On the transfer date, the members of each of the former egg marketing authorities cease to hold office (without any right to compensation for loss of office).

(2) From the transfer date—

(a) the constitution of each of the former egg marketing authorities is suspended and each is to be administered by an administrator; and

(b) the administrator has all the powers and functions of the Authority (so far as the Authority continues to have powers and functions under this Act).

(3) The administrator of a former egg marketing authority is the person who holds office as chairperson of the Authority immediately before the transfer date.

(4) However, the Minister may appoint an administrator if—

(a) there is no chairperson to assume the office of administrator under subsection (2); or

(b) the chairperson is unwilling to undertake the duties of administrator; or

(c) the administrator dies or ceases to hold office.

(5) A person is eligible to be appointed as the administrator of a former egg marketing authority if the person—

(a) is a former member of the former egg marketing authority; or

(b) has extensive experience of the egg industry as a poultry farmer or an administrator; or

(c) has qualifications and experience in public administration or financial administration.

(6) The administrator ceases to hold office if the administrator—

(a) resigns by signed notice given to the Minister; or

(b) completes a term of office and is not reappointed; or

(c) is convicted of an indictable offence or an offence against this Act; or

(d) is removed from office by the Governor in Council under subsection (7).

(7) The Governor in Council may remove the administrator from office if the administrator—

(a) engages in misbehaviour; or

(b) becomes incapable of performing the duties of the administrator because of physical or mental incapacity; or

(c) is incompetent; or

(d) does anything that, in the Governor in Council's opinion, is a reasonable and sufficient justification for removal from office.

(8) An administrator is entitled to remuneration at a rate decided by the Company.

(9) On the dissolution date, the administrator ceases to hold office (without any right to compensation for loss of office).

Powers of former marketing authorities after transfer date

Clause**21.(1)** As from the transfer date, the powers that the former egg marketing authorities had apart from this Act are suspended and they have the following powers—

(a) to distribute shares and to do anything necessary for or incidental to the distribution of shares under this Act; and

(b) to execute any instrument of transfer or other document to evidence or give effect to the transfer of assets and liabilities under this Act.

(2) A document apparently bearing the common seal of a former egg marketing authority and the signature of the administrator is to be taken in any legal proceeding, in the absence of evidence to the contrary, to have been properly executed by the former egg marketing authority.

Costs of former egg marketing authorities

***Clause*22.** Any costs incurred by a former egg marketing authority after the transfer date (including remuneration of the administrator) are to be paid by the Company.

Distribution of shares in the Company

***Clause*23.(1)** After the allocation of shares to a former egg marketing authority in consideration of the transfer of assets, the administrator must invite applications for the shares from the producers in the former egg marketing authority's region who held quotas on the transfer date.

(2) The invitation must be made by letter sent to the producer.

(3) An applicant is entitled to a number of shares decided in accordance with the share distribution scheme.

(4) The shares are to be distributed by the administrator by way of gratuitous transfer.

(5) Acceptance of a gratuitous transfer of shares by a person is sufficient to signify agreement by the person to be bound by the memorandum and articles of association of the Company.

Dissolution of former egg marketing authorities

***Clause*24.(1)** When the distribution of shares has been completed by the administrator of a former egg marketing authority, the administrator must notify the Minister.

(2) When both administrators have notified completion of the distribution, a regulation must be made appointing a date (the **"dissolution date"**) for the dissolution of the former egg marketing authorities.

(3) On the dissolution date, the former egg marketing authorities are dissolved.

Division 6—Distribution of shares among northern and independent producers

Distribution of shares among northern and independent producers

***Clause*25.(1)** Applications for shares are to be invited from Mid-North Queensland producers, Far North Queensland producers and independent producers in accordance with the share distribution scheme.

(2) The invitation must be made to Mid-North Queensland producers and Far North Queensland producers by EMB's administrator, and to independent producers by the Company itself.

(3) The invitation must be made by letter sent to the producer.

(4) If a Mid-North Queensland producer or a Far North Queensland producer applies to EMB's administrator for shares to which the producer is entitled under the share distribution scheme, the administrator must transfer the shares gratuitously.

(5) If an independent producer applies to the Company for shares to which the producer is entitled under the share distribution scheme, the Company must issue the shares gratuitously.

(6) An application for shares in response to an invitation under this section is sufficient to signify agreement by the applicant to be bound by the memorandum and articles of association of the Company.

PART 3—ADMINISTRATION AND REVIEW

Division 1—Administration

Administrative responsibility of the Company

***Clause*26.(1)** The Company is responsible for the administration and enforcement of this Act.

(2) However—

(a) the Company is, in the performance of its statutory functions and the exercise of its statutory powers, subject to direction by the Minister under this Part; and

(b) the Authority is not subject to the Company's control or direction.

The Company's responsibility to account for its administration

***Clause*27.(1)** The Company is required to report on, and account for, its administration under the *Financial Administration and Audit Act 1977.*

(2) The *Financial Administration and Audit Act 1977* applies to the Company, subject to any changes prescribed by regulation, as if it were a statutory body within the meaning of that Act.

Application of certain other laws

***Clause*28.(1)** The Company is—

(a) a public authority for the purposes of the *Freedom of Information Act 1992*; and

(b) a unit of the public administration for the purposes of the *Criminal Justice Act 1989*; and

(c) a unit of the public sector for the purposes of the *Public Sector Management Commission Act 1990*; and

(d) a public authority for the purposes of the *Libraries and Archives Act 1988*; and

(e) an authority for the purposes of the *Parliamentary Commissioner Act 1974*.

(2) The Company is subject to the *Judicial Review Act 1991*.

(3) The mention of particular Acts in this section raises no implication that the Company is not subject to other Acts.

Division 2—Ministerial direction

Ministerial direction

***Clause*29.(1)** The Minister may direct the Company about the performance of its statutory functions and the exercise of its statutory powers.

(2) A direction may only be given by the Minister under this section if—

(a) the Minister is satisfied that exceptional circumstances exist justifying the Minister's intervention in the public interest; and

(b) the Minister has given the Company written notice of intention to exercise the power of direction; and

(c) the Company has been given a reasonable opportunity to discuss the proposed direction with the Minister.

(3) If the Minister gives a direction to the Company—

(a) the direction must be given in writing and must state the date it is to take effect; and

(b) the direction must be published in the Gazette as soon as practicable after it is given; and

(c) the direction must be tabled in the Legislative Assembly within 14 sitting days after it is given; and

(d) the Company may include in its next annual report—

(i) the text of the direction; and

(ii) a statement of any effect that the direction has had, or is expected to have, on the Company's operations.

(4) The Minister is not to be regarded as a director of the Company because of the existence, or the exercise, of the power of direction conferred by this section.

Noncompliance with direction

***Clause*30.** If the Company fails to comply with a direction under this Division, the Minister must draw the matter to the attention of the Legislative Assembly.

Exclusion of compensation

Clause**31.** The Company is not entitled to compensation for any actual or prospective loss because of a Ministerial direction under this Division.

Division 3—Egg Industry Review Committee

Establishment of Review Committee

Clause**32.** As from 1 January 1997, a committee called the Egg Industry Review Committee is established.

Constitution of Committee

Clause**33.(1)** The Review Committee is to consist of 5 members appointed by the Governor in Council.

(2) The members of the Review Committee are to consist of—

(a) 1 (the chairperson) who is neither a producer nor a person with a financial interest in the handling, marketing, processing, or industrial or commercial use, of eggs; and

(b) the chairperson of the board of directors of the Company; and

(c) a representative of the department; and

(d) a representative of consumers of eggs; and

(e) a representative of the Queensland Egg Industry Council.

(3) The Governor in Council may appoint a member of the Review Committee to act as chairperson—

(a) during any vacancy, or all vacancies, in the office; or

(b) during any period, or all periods, when the chairperson is absent from duty or from the State or cannot, for any reason, perform official duties.

Vacation of office

Clause**34.(1)** A member of the Review Committee may resign by signed notice given to the Minister.

(2) The Governor in Council may terminate the appointment of a member of the Review Committee for any reason or none.

Fees and allowances

***Clause*35.** The chairperson and other members of the Review Committee are entitled to the fees and allowances that may be decided by the Governor in Council.

Secretary

***Clause*36.(1)** A secretary to the Review Committee is to be appointed.

(2) The secretary must be an officer of the department appointed by the Minister.

Functions of Review Committee

***Clause*37.** The functions of the Review Committee are—

(a) to review the Company's exercise of its statutory powers and functions; and

(b) to assess the effectiveness of the compulsory marketing scheme and the Company's administration of the compulsory marketing scheme; and

(c) to recommend the continuation, amendment or abolition of the compulsory marketing scheme in the light of its assessment.

Submissions and hearings

***Clause*38.(1)** The Review Committee may, by public advertisement, invite submissions from interested persons on any subject that is under investigation by the Committee.

(2) The Review Committee may conduct public or private hearings on any subject that is under investigation by the Committee.

Report about effectiveness of scheme

***Clause*39.(1)** The Review Committee must not later than 1 January 1998 give a report to the Minister containing its assessment of the compulsory marketing scheme and its recommendations about the continuation, amendment or abolition of the scheme.

(2) Before completing its final report, the Review Committee must publish an interim report and allow a reasonable time (at least 1 month) for interested persons to make submissions to the Committee on the report.

(3) The Minister must table the report in the Legislative Assembly within 14 sitting days after receipt of the final report.

Costs of the Committee

***Clause*40.(1)** The costs and expenses of the Review Committee, other than the fees and allowances to be paid to its members, are to be paid by the Company.

(2) The fees and allowances to be paid to the members of the Review Committee are to be paid out of the department's funds.

PART 4—THE COMPULSORY MARKETING SCHEME

Division 1—Application and vesting of eggs

Application

***Clause*41.(1)** This Part applies to all eggs produced after the commencement of this Act.

(2) However, this Part is suspended if—

(a) the Company amends its articles of association to allow a person who is not a producer to become a shareholder in the Company;

or

(b) shares in the Company are listed for trading on a stock exchange.

Vesting of eggs

***Clause*42.(1)** All eggs to which this Part applies vest in the Company.

(2) The vesting takes effect from the time the eggs are laid.

(3) If eggs vest in the Company under this Part, the producer has, instead of a right to ownership of the eggs, a statutory right to payment after the eggs are delivered to, and accepted and sold by, the Company.

Division 2—Information to be given by producers

Information to be given by producers

***Clause*43.(1)** A producer must give the Company information about the production of eggs as and when required by regulation.

(2) At the Company's request, a producer must give the Company specified information within a reasonable time allowed in the request.

(3) The information that a producer may be required to give under this section includes, for example—

(a) information about the producer's flock management practices and techniques; and

(b) the producer's plans for increasing or culling or otherwise decreasing the flock of hens used in the commercial production of eggs; and

(c) details of total production of eggs generally, eggs of a particular class or grade, or eggs of each class and grade.

Division 3—Delivery of vested eggs

Delivery of vested eggs

***Clause*44.(1)** A producer must deliver vested eggs to the Company.

(2) The eggs must be delivered in accordance with the Company's delivery requirements.

(3) The producer must, on delivering the eggs, give the person who receives the eggs on the Company's behalf a form stating—

(a) the name and address of the producer; and

(b) any other information required by regulation.

(4) This section does not apply to exempted eggs.

Delivery requirements

***Clause*45.(1)** The Company may decide delivery requirements—

(a) fixing the times and places for delivery of vested eggs or any class of vested eggs; and

(b) specifying minimum quality standards with which the eggs must conform.

(2) The delivery requirements—

(a) may apply generally to producers; or

(b) may apply to a particular class of producers or to individual producers.

(3) The Company must notify producers of its delivery requirements either by giving public notice of the delivery requirements or by notice given individually to the producers affected by the delivery requirements.

(4) The Company must accept vested eggs delivered to it under this Act.

(5) However, the Company may decline to accept delivery of vested eggs if—

(a) the eggs are not delivered in accordance with the relevant delivery requirements; or

(b) the eggs do not meet the minimum quality standards fixed by the relevant delivery requirements; or

(c) the eggs are over-quota eggs.

Offences against compulsory delivery requirements

***Clause*46.(1)** A person must not remove, or arrange for or permit the removal of, vested eggs from the property on which they were produced other than for the purpose of delivering them to the Company.

Maximum penalty—80 penalty units.

(2) A person must not part with possession of vested eggs, or receive vested eggs, in contravention of the requirement that they be delivered to the Company.

Maximum penalty—80 penalty units.

(3) A person must not sell or purchase, or purport to sell or purchase, vested eggs in contravention of the requirement that they be delivered to the Company.

Maximum penalty—80 penalty units.

Division 4—Exemptions

Exemption for eggs required by the producer

***Clause*47.** Eggs that a producer retains for use on the property on which the eggs were produced (but not for a commercial purpose prescribed by regulation) are exempt from the compulsory marketing scheme.

General exemption

***Clause*48.(1)** The Company may, by public notice, exempt eggs from the compulsory marketing scheme.

(2) The notice of exemption must state—

(a) the nature of the exemption; and

(b) the class of eggs to which the exemption applies (which may be defined by reference to the areas in which the eggs are produced or any other factor or combination of factors;) and

(c) the period for which the exemption is to apply; and

(d) any conditions to which the exemption is subject.

(3) The Company may, by public notice, revoke an exemption under this section.

(4) In considering whether to make or revoke an exemption under this section, the Company must have regard to—

(a) seasonal conditions; and

(b) domestic requirements for eggs; and

(c) the effect the exemption is having or would have on the practical efficiency of the Company's operations; and

(d) the effect the exemption is having or would have on the Company's capacity to operate economically and profitably; and

(e) the interests of producers.

Special exemptions

***Clause*49.(1)** The Company may give a special exemption to a producer exempting all eggs produced by the producer's hens, eggs produced for hatching, or eggs of another class specified in the exemption, from the compulsory marketing scheme.

(2) In deciding whether to give a special exemption and, if so, the conditions on which the exemption should be given, the Company should attempt to achieve a reasonable balance between—

(a) the need to maintain the integrity of the compulsory marketing scheme; and

(b) the interests of the individual producers who apply for special exemptions.

(3) If the Company decides to give a special exemption, a fee decided by the Company must be paid by the applicant.

(4) A special exemption is subject to any conditions decided by the Company and specified in the instrument of exemption.

(5) Conditions of a special exemption may, for example—

(a) require the producer to give the Company details of—

(i) the producer's total egg production (including the quantities of each class and grade); or

(ii) the sales made under the special exemption (including the quantities sold in each class and grade and the brand name under which the eggs were sold); or

(iii) the producer's plans for increasing, or culling or otherwise decreasing, the flock of productive hens; and

(b) allow the Company or an authorised person access to financial or other records about the sale of eggs under the special exemption.

Division 5—Egg pools

Egg pools

***Clause*50.(1)** The Company may establish the egg pools that it considers appropriate.

(2) An egg pool may be established by reference to any combination of any of the following factors—

(a) the time of the delivery of the eggs;

(b) the area in which the eggs were produced;

(c) the quality or grade of the eggs;

(d) the characteristics of the eggs;

(e) the circumstances of the production of the eggs;

(f) another factor the Company considers appropriate.

Distribution of proceeds of sale of pooled eggs

***Clause*51.(1)** If the Company sells eggs from an egg pool, the net proceeds of sale must be distributed among the producers who contributed eggs to the pool in proportion to the quantity of eggs contributed by each producer.

(2) The net proceeds of sale are the gross proceeds less—

(a) the Company's costs incurred in receiving, handling, testing, treating, storing, transporting, selling and delivering the eggs; and

(b) any costs to be recouped by the Company under subsection (5)(c).

(3) The following deductions from the producer's share of the net proceeds are authorised—

(a) debts owing by the producer to the State or any body representing the State;

(b) debts owing by the producer to the Company.

(4) The Company may enter into a contract with a producer under which payment is to be made for eggs contributed by the producer to a pool on some basis other than the basis provided by this section.

(5) The Company may, at any time, transfer the eggs remaining in a particular pool (the **"old pool"**) to another pool (the **"new pool"**) and, in that event—

(a) the transfer is taken to be a notional sale of the remaining eggs to the new pool for a fair price decided by the Company; and

(b) the Company must then distribute an amount equivalent to the price decided by the Company among the producers who contributed eggs to the old pool as if the eggs had actually been sold by the Company; and

(c) the Company may recoup its costs from the sale of eggs from the new pool.

Separate treatment of certain eggs

Clause **52.(1)** Even though the Company has established a pool for a particular class of eggs, the Company may enter into a contract with a producer to market the eggs produced by the producer separately from the eggs in the pool.

(2) If the Company accepts over-quota eggs from a producer, it may include the eggs in a pool only if the pool consists only of over-quota eggs.

PART 5—THE QUEENSLAND EGG INDUSTRY MANAGEMENT AUTHORITY

Division 1—The Authority and its general powers

Establishment of the Authority

***Clause*53.(1)** The Queensland Egg Industry Management Authority is established.

(2) The Authority—

(a) is a body corporate; and

(b) has a seal; and

(c) may sue and be sued in its corporate name.

(3) Judicial notice must be taken of the imprint of the Authority's seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

Role of the Authority

***Clause*54.** The Authority is responsible for administering the statutory hen quota system established by this Act.

General powers of the Authority

***Clause*55.(1)** The Authority has, in the performance of its functions, all the powers of a natural person and may, for example—

(a) enter into contracts; and

(b) acquire, hold, deal with and dispose of property; and

(c) appoint agents and attorneys; and

(d) make charges for services provided by it.

(2) The Authority may recover a fee or charge that is due to it under this Act as a debt.

Delegation

***Clause*56.(1)** The Authority may delegate its powers to—

(a) a committee formed by the Authority; or

(b) a member of the Authority; or

(c) a member of the Authority's staff.

(2) The Authority may delegate powers only if satisfied that the committee to which, or the person to whom, the delegation is proposed has the expertise and experience necessary for the proper exercise of the powers.

Division 2—Ministerial direction

Ministerial direction

***Clause*57.(1)** The Minister may direct the Authority in relation to the performance of its statutory functions and the exercise of its statutory powers.

(2) A direction may only be given by the Minister under this section if—

(a) the Minister is satisfied that exceptional circumstances exist justifying the Minister's intervention in the public interest; and

(b) the Minister has given the Authority written notice of intention to exercise the power of direction; and

(c) the Authority has been given a reasonable opportunity to discuss the proposed direction with the Minister.

(3) If the Minister gives a direction to the Authority—

(a) the direction must be given in writing and must state the date it is to take effect; and

(b) the direction must be published in the Gazette as soon as practicable after it is given; and

(c) the direction must be tabled in the Legislative Assembly within 14 sitting days after it is given; and

(d) the Authority may include the text of the direction in its next annual report.

Noncompliance with direction

***Clause*58.** If the Authority fails to comply with a direction under this Division, the Minister must draw the matter to the attention of the Legislative Assembly.

Division 3—Composition of the Authority

Composition of the Authority

***Clause*59.(1)** The Authority is to consist of the following members—

(a) a chairperson who must be independent of the Government and the industry;

(b) an officer of the department with experience in the industry;

(c) a producer nominated by the Council or, if the Council fails to make a nomination, by the Company.

(2) The chairperson and other members of the Authority are to be appointed by the Governor in Council.

(3) The Governor in Council may appoint a person to act as a member of the Authority during any period, or all periods, when a particular member is absent or cannot, for any reason, perform the duties of office.

Term of office

***Clause*60.(1)** A member of the Authority is to be appointed for a term of not more than 3 years.

(2) A member of the Authority ceases to hold office if the member—

(a) resigns by signed notice given to the Minister; or

(b) completes a term of office and is not reappointed; or

(c) is convicted of an indictable offence or an offence against this Act; or

(d) is removed from office by the Governor in Council under subsection (3).

(3) The Governor in Council may remove a member of the Authority from office if the member—

(a) engages in misbehaviour; or

(b) becomes incapable of performing the duties of a member of the Authority because of physical or mental incapacity; or

(c) is incompetent; or

(d) does anything that, in the Governor in Council's opinion, is a reasonable and sufficient justification for removal from office.

Fees and allowances

***Clause*61.** The members of the Authority are entitled to the fees and allowances that may be decided by the Governor in Council.

Division 4—Proceedings of the Authority

Time and place of meetings

***Clause*62.(1)** Meetings of the Authority are to be held at the times and places the Authority decides.

(2) However, the chairperson may convene a meeting of the Authority at any time.

Procedure governing transaction of business

***Clause*63.(1)** The chairperson is to preside at all meetings at which the chairperson is present.

(2) If the chairperson is absent, the member chosen by the members present is to preside.

(3) At a meeting of the Authority—

(a) 2 members form a quorum; and

(b) a question is to be decided by a majority of votes of members present and voting; and

(c) each member present has 1 vote on each question to be decided and, if the votes are equal, the member presiding at the meeting has a casting vote.

(4) The Authority may regulate its proceedings (including its meetings) as it considers appropriate.

(5) The Authority may hold meetings, or permit members to take part in meetings, by telephone, closed-circuit television or another form of communication.

(6) A member who takes part in a meeting of the Authority by permission under subsection (5) is taken to be present at the meeting.

(7) If—

(a) all members of the Authority agree, in writing, to a proposed resolution of the Authority; and

(b) notice of the proposed resolution was given under procedures approved by the Authority;

the resolution is a valid resolution of the Authority, even though it was not passed at a meeting of the Authority.

Disclosure of interests

***Clause*64.(1)** This section applies to a member of the Authority if—

(a) the member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the Authority (other than an interest that the member has in common with producers generally, a substantial class of producers or some other substantial class); and

(b) the interest could conflict with the proper performance of the member's duties about the consideration of the issue.

(2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the Authority.

(3) The disclosure must be recorded in the Authority's minutes and the member must not, without the Authority's approval—

(a) be present when the Authority considers the issue; or

(b) take part in a decision of the Authority on the issue.

(4) Another member who also has a direct or indirect financial interest in the issue must not—

(a) be present when the Authority is making its decision to give an approval mentioned in subsection (3); or

(b) take part in making the decision to give the approval.

Minutes

***Clause*65.** The Authority must keep minutes of its proceedings.

Division 5—Staff and superannuation

Staff of the Authority

***Clause*66.(1)** The Authority may employ, or engage the services of, the employees, consultants and contractors that are necessary for the administration and enforcement of this Act.

(2) The terms of employment of the Authority's employees are to be decided by it.

(3) However, subsection (2) has effect subject to any relevant industrial award or agreement.

Superannuation schemes

***Clause*67.(1)** The Authority may, with the Governor in Council's approval, establish and maintain, or participate in, a scheme to provide superannuation benefits for its employees and members and, for the purpose—

(a) establish and maintain any fund; and

(b) contribute to the scheme.

(2) The Authority may, with the Governor in Council's approval, amend a scheme established by it.

(3) An approval under subsection (1) or (2) may be given on conditions.

(4) The conditions of an approval may, for example, authorise the Auditor-General to audit accounts and records of any scheme established and maintained by the Authority.

Division 6—General statutory responsibilities

Application of certain other laws

***Clause*68.(1)** The Authority is—

(a) a public authority for the purposes of the *Freedom of Information Act 1992*; and

(b) a unit of the public administration for the purposes of the *Criminal Justice Act 1989*; and

(c) a unit of the public sector for the purposes of the *Public Sector Management Commission Act 1990*; and

(d) a public authority for the purposes of the *Libraries and Archives Act 1988*; and

(e) an authority for the purposes of the *Parliamentary Commissioner Act 1974*.

(2) The Authority is subject to the *Judicial Review Act 1991*.

(3) The mention of particular Acts in this section raises no implication that the Authority is not subject to other Acts.

PART 6—HEN QUOTAS

Division 1—Basis of quota allocation

State quota

***Clause*69.** The basis on which the Authority is to allocate quotas and decide quota numbers under this Act is to be a State quota representing the maximum number of hens that may be economically used for the commercial production of eggs in the State without adversely affecting the stability of the industry.

Deciding the State quota

***Clause*70.(1)** The Authority is to decide the State quota and may revise the State quota from time to time.

(2) Before the Authority decides or revises the State quota, the Authority must consult with the Company.

Publication of State quota

***Clause*71.** When the Authority decides or revises the State quota, the State quota or the revised State quota must be published in the Gazette.

Division 2—Grant of hen quotas

Grant of quota

***Clause*72.(1)** On the application of a person who proposes to carry on business as a commercial producer of eggs, the Authority may grant the applicant a hen quota authorising the applicant to keep a specified number of hens (the **"quota number"**) for the commercial production of eggs.

(2) An application for a quota—

(a) must be made in writing to the Authority and must contain the information required by the Authority; and

(b) must be accompanied by the fee prescribed by regulation.

Conditions of quota

***Clause*73.(1)** A quota is subject to—

(a) conditions prescribed by regulation; and

(b) other conditions decided by the Authority and specified in the quota.

(2) The holder of a quota must pay an annual fee, to be fixed in accordance with a scale prescribed by regulation.

(3) If the fee is not paid within 3 months after the date fixed in an account for payment given to the holder of the quota, the quota—

(a) is suspended until the fee is paid; and

(b) may be cancelled by the Authority if the fee is not paid within a further 3 months.

Division 3—Amendment of quotas and temporary adjustment of quota numbers

Amendment of quotas

***Clause*74.(1)** On the application of the holder of a quota, the Authority may—

(a) increase or reduce the quota number; or

(b) amend a condition of the quota.

(2) If the holder of a quota contravenes a provision of this Act or a condition to which the quota is subject, the Authority may, by written notice given to the holder, reduce the quota number, amend the conditions to which the quota is subject, or both.

(3) Before the Authority exercises its powers under subsection (2) to reduce a quota number or amend the conditions to which a quota is subject, the Authority must allow the holder of the quota a reasonable opportunity to make representations to the Authority or an officer of the Authority on the proposed action.

Temporary adjustment of quota numbers

***Clause*75.(1)** If the Authority is of the opinion that seasonal or market conditions justify a temporary increase or decrease of quota numbers, the Authority may, by Gazette notice, adjust numbers by a percentage increase or decrease.

(2) An adjustment under this section operates for the period specified in the notice.

(3) The Authority must notify each quota holder by letter of a temporary increase or decrease of the quota numbers under this section.

Division 4—Transfer of quotas

Transfer of quotas

***Clause*76.(1)** The holder of a quota may, with the approval of the Authority—

(a) transfer the quota to another person; or

(b) transfer part of the quota number to another person.

(2) An application for the Authority's approval under this section—

(a) must be made in writing to the Authority and must contain the information required by the Authority; and

(b) must be accompanied by the fee prescribed by regulation.

(3) The Authority may grant its approval under this section on conditions that the Authority considers appropriate.

(4) If the Authority approves the transfer of part of a quota number under this section—

(a) the applicant's quota number is reduced by the number approved for transfer by the Authority; and

(b) if the transferee holds a quota, the transferee's quota number is increased by the number approved for transfer by the Authority and, if not, the Authority must issue a quota in the name of the transferee with a quota number not less than the number approved for transfer by the Authority.

(5) A quota lease has no effect unless approved as a transfer under this section.

(6) A quota lease does not affect the lessor's or the lessee's liabilities under this Act or under the articles of association of the Company.

(7) However, when the lessor makes a payment under this Act or the articles of association of the Company towards a liability the lessor has as the holder of a quota, the lessor may recover a proportion of the payment as a debt from the lessee.

(8) The proportion is the same proportion the number of hens covered by the quota lease bears to the lessor's quota number immediately before the lease was granted.

Division 5—Cancellation and surrender of quotas

Cancellation of quota

***Clause*77.(1)** If the holder of a quota contravenes a provision of this Act or a condition to which the quota is subject, the Authority may cancel the quota by written notice given to the holder of the quota.

(2) Before the Authority exercises its powers under subsection (1) to cancel a quota, the Authority must allow the holder of the quota a reasonable opportunity to make representations to the Authority or an officer of the Authority on the proposed action.

Surrender of quota

***Clause*78.** The holder of a quota may, by written notice given to the Authority—

(a) surrender the quota; or

(b) voluntarily reduce the quota number.

Division 6—Offences

Unlawful keeping of hens

***Clause*79.** A person must not keep hens for the commercial production of eggs unless the person holds a quota.

Maximum penalty—20 penalty units.

Number of hens that a producer may keep

***Clause*80.** A producer must not keep a number of hens for the commercial production of eggs that is more than the producer's quota number.

Maximum penalty—20 penalty units.

Division 7—Exemptions

General exemption

***Clause*81.(1)** The Authority may, by public notice, give a general exemption from the provisions, or any specified provisions, of this Part.

(2) The notice of exemption must state—

(a) the nature of the exemption; and

(b) the period for which the exemption is to apply; and

(c) any conditions to which the exemption is subject.

(3) The Authority may, by public notice, revoke an exemption under this section.

(4) In considering whether to give or revoke an exemption under this section, the Authority must have regard to—

(a) seasonal conditions; and

(b) domestic requirements for eggs; and

(c) the effect the exemption is having or would have on the industry.

Special exemptions

***Clause*82.(1)** The Authority may give a special exemption from this Part or specified provisions of this Part.

(2) In deciding whether to give a special exemption and, if so, the conditions on which the exemption should be given, the Authority should attempt to achieve a reasonable balance between—

(a) the need to maintain the stability of the industry; and

(b) the interests of the individual producers who apply for special exemptions.

(3) If the Authority decides to give a special exemption, a fee decided by the Authority must be paid by the applicant.

(4) A special exemption is subject to conditions prescribed by regulation and any additional conditions decided by the Authority and specified in the instrument of exemption.

(5) If the person in whose favour a special exemption is given contravenes a condition of the exemption, the Authority may revoke the exemption by written notice given to the person.

PART 7—REVIEW OF ADMINISTRATIVE DECISIONS

Application to Company or Authority for reconsideration of administrative decisions

***Clause*83.(1)** A person aggrieved by a decision of the Company about the administration of the compulsory marketing scheme may apply to the Company for reconsideration of the decision.

(2) A person aggrieved by a decision of the Authority under this Act may apply to the Authority for reconsideration of the decision.

(3) An application must be made in writing setting out in detail the grounds on which the applicant seeks reconsideration of the decision.

(4) A decision made by the Company or the Authority on an application for reconsideration under this section cannot be the subject of a further application for reconsideration under this section.

Powers of Company or Authority on an application under this Part

***Clause*84.** The Company or the Authority may on an application under section 83 confirm, amend or reverse the decision subject to the application.

Right to appeal to the Magistrates Court

***Clause*85.(1)** A person aggrieved by a decision of the Company or the Authority on a reconsideration under section 83 (Application to Company or Authority for reconsideration of administrative decisions) may appeal against the decision.

(2) The appeal may be made to the Magistrates Court nearest the place where the aggrieved person lives or carries on a business, or proposes to carry on a business, affected by the decision.

How to start appeal

***Clause*86.(1)** An appeal to a Magistrates Court is started by—

(a) filing a written notice of appeal with the clerk of the court of the Magistrates Court; and

(b) serving a copy of the notice on the respondent Company or Authority.

(2) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against.

(3) The Court may at any time extend the period for filing the notice of appeal.

(4) The notice of appeal must state the grounds of appeal.

Stay of operation of decisions

***Clause*87.(1)** The Magistrates Court has power to grant a stay of a decision appealed against for the purpose of securing the effectiveness of the appeal.

(2) A stay—

(a) may be granted on conditions that the Court considers appropriate; and

(b) has effect for the period specified by the Court; and

(c) may be revoked or amended by the Court.

(3) The period of a stay specified by the Court must not extend past the time the Court decides the appeal.

(4) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

Hearing procedures

***Clause*88.(1)** The power under the *Magistrates Courts Act 1921* to make rules for Magistrates Courts includes power to make rules for appeals to a Magistrates Court under this Part.

(2) Subject to section 86, the procedure for an appeal to the Magistrates Court is to be in accordance with—

(a) the rules made under the *Magistrates Courts Act 1921*; or

(b) in the absence of relevant rules—directions of the Court.

(3) An appeal is to be by way of rehearing, unaffected by the decision appealed against.

(4) In deciding an appeal, the Court—

(a) is not bound by the rules of evidence; and

(b) must observe natural justice; and

(c) may hear the appeal in court or chambers.

Powers of Court on appeal

***Clause*89.(1)** In deciding an appeal, a Magistrates Court may—

(a) confirm the decision appealed against; or

(b) set aside the decision and substitute another decision; or

(c) set aside the decision and return the matter to the respondent

Company or Authority with directions that the Court considers appropriate.

(2) In substituting another decision, the Court has the same powers as the respondent Company or Authority.

(3) If the Court substitutes another decision, the substituted decision is taken, for the purposes of this Act, to be the decision of the respondent Company or Authority.

Appeal to District Court on questions of law only

***Clause*90.** A party aggrieved by the decision of the Magistrates Court may appeal to a District Court, but only on a question of law.

PART 8—ENFORCEMENT MATTERS

Division 1—Authorised persons

Appointment of authorised persons

***Clause*91.(1)** The Company or the Authority may appoint its employees and other persons to be authorised persons.

(2) Appointment as an authorised person of a person who is not an employee of the Company or Authority does not, of itself, make the person an employee.

(3) A person may be appointed to be an authorised person only if—

- (a) the person—
  - (i) has satisfactorily completed a course of training approved by the Minister; or
  - (ii) has, in the appointor’s opinion, the necessary expertise or experience to be an authorised person; and
- (b) the appointment is approved by the chief executive of the department.

(4) The appointor may limit the powers of an authorised person by stating conditions in the instrument of appointment.

Terms of appointment of authorised persons

***Clause*92.(1)** An authorised person holds office on the conditions specified in the instrument of appointment.

(2) An authorised person—

(a) if the appointment provides for a term of appointment—stops holding office as an authorised person at the end of the term; and

(b) may resign by signed notice given to the appointor; and

(c) if the conditions of appointment provide—stops holding office as an authorised person—

(i) on stopping to hold some other office specified in the conditions of appointment; or

(ii) on stopping to be employed by, or engaged under a contract to provide services to, the appointor.

(3) If an authorised officer is appointed or stops holding office, the appointor must—

(a) in the case of an appointment—give the chief executive of the department a copy of the instrument of appointment; and

(b) in the case of an authorised person stopping to hold office—give the chief executive of the department notice stating when, and in what circumstances, the authorised person stopped holding office.

Powers of authorised persons

***Clause*93.(1)** An authorised person has the powers given under this or another Act.

(2) A regulation may limit the powers of authorised persons of a specified class.

Identity cards

Clause **94.(1)** The Company must issue an identity card to each authorised person appointed by the Company and the Authority must issue an identity card to each authorised person appointed by the Authority.

(2) The identity card must—

(a) contain a recent photograph of the authorised person; and

(b) be in a form approved by the Minister; and

(c) be signed by the authorised person.

(3) A person who stops being an authorised person must return the identity card to the appointor as soon as practicable after stopping to be an authorised person, unless the person has a reasonable excuse for not returning it.

Maximum penalty for subsection (3)—40 penalty units.

Production of authorised person's identity card

Clause **95.(1)** An authorised person may exercise a power in relation to a person only if the authorised person displays the authorised person's identity card for inspection by the person.

(2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.

Protection from liability

Clause **96.(1)** This section applies to—

(a) an authorised person; and

(b) a person acting under the direction of an authorised person.

(2) The person does not incur civil liability for an act or omission done honestly and without negligence under this Act.

(3) A liability that would, apart from this section, attach to the person attaches instead to the Company or the Authority (according to whether the person was purporting to act for the Company or for the Authority at the time of the act or omission out of which the liability arose).

Division 2—Powers of authorised persons in relation to places and vehicles

Entry of place

***Clause*97.** An authorised person may enter a place if—

(a) the occupier of the place consents to the entry; or

(b) the place is a public place—the entry is made when—

(i) members of the public attend; or

(ii) the place is open for admission by the public; or

(c) the place is a place used for the commercial production of eggs—the entry is made when the place—

(i) is open for conduct of business; or

(ii) is otherwise open for entry; or

(d) the entry is authorised by a warrant.

Warrants

***Clause*98.(1)** An authorised person may apply to a Magistrate for a warrant for a place.

(2) The application must—

(a) be sworn; and

(b) set out the grounds on which the warrant is sought.

(3) The Magistrate may refuse to consider the application until the authorised person gives the Magistrate all the information the Magistrate requires about the application in the way the Magistrate requires.

Example—

The Magistrate may require additional information supporting the application be given by statutory declaration.

(4) The Magistrate may issue a warrant only if the Magistrate is satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity (the **"evidence"**) that may provide evidence of the commission of an offence against this Act; and

(b) the evidence is, or may be within the next 7 days, at the place.

(5) The warrant must state—

(a) that the authorised person may, with necessary and reasonable assistance and force—

(i) enter the place; and

(ii) exercise the authorised person's powers under this Act; and

(b) the evidence for which the warrant is issued; and

(c) the hours of the day when entry may be made; and

(d) the day (within 14 days after the warrant's issue) on which the warrant stops having effect.

Warrants—applications made otherwise than in person

***Clause*99.(1)** An authorised person may apply for a warrant by phone, fax, radio or another form of communication if the authorised person considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the authorised person's remote location.

(2) Before applying for the warrant, the authorised person must prepare an application setting out the grounds on which the warrant is sought.

(3) The authorised person may apply for the warrant before the application is sworn.

(4) If the Magistrate issues the warrant and it is reasonably practicable to fax a copy of it to the authorised person, the Magistrate must immediately fax the copy to the authorised person.

(5) If the Magistrate issues the warrant but it is not reasonably practicable to fax a copy of it to the authorised person—

(a) the Magistrate must—

(i) tell the authorised person what the terms of the warrant are; and

(ii) tell the authorised person the date and time the warrant was signed; and

(iii) record the reasons for issuing the warrant on the warrant; and

(b) the authorised person must—

(i) complete a form of warrant (**"warrant form"**) in the same terms as the warrant issued by the Magistrate; and

(ii) write on the warrant form the name of the Magistrate and the date and time the Magistrate signed the warrant.

(6) The facsimile warrant, or the warrant form properly completed by the authorised person, is authority for the entry and the exercise of the other powers authorised by the warrant issued by the Magistrate.

(7) The authorised person must send to the Magistrate—

(a) the sworn application; and

(b) if a warrant form was completed by the authorised person—the completed warrant form.

(8) The sworn application and any completed warrant form must be sent to the Magistrate at the earliest practicable opportunity.

(9) When the Magistrate receives the application and any warrant form, the Magistrate must attach them to the warrant issued by the Magistrate.

(10) If—

(a) it is material for a court to be satisfied the exercise of a power was authorised by a warrant issued under this section; and

(b) the warrant is not produced in evidence;

the court must assume the exercise of power was not authorised by a warrant, unless the contrary is proved.

Entry or boarding of vehicles

***Clause*100.(1)** An authorised person may enter or board a vehicle if the authorised person has reasonable grounds for suspecting—

(a) the vehicle is being, or has been, used in the commission of an offence against this Act; or

(b) the vehicle, or a thing in or on the vehicle, may provide evidence of the commission of an offence against this Act.

(2) If the vehicle is moving or about to move, the authorised person may signal the person in control of the vehicle—

(a) to stop the vehicle; or

(b) not to move the vehicle.

(3) To enable the vehicle to be entered or boarded, the authorised person may—

(a) act with necessary and reasonable assistance and force; and

(b) require the person in control of the vehicle to give reasonable assistance to the authorised person.

(4) A person must not disobey a signal under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(5) A person must not fail to comply with a requirement under subsection (3)(b), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(6) It is a reasonable excuse for a person to disobey a signal under subsection (2) if—

(a) the person reasonably believes that to obey the signal immediately would have endangered the person or another person; and

(b) the person obeys the signal as soon as it is practicable to obey it.

General powers in relation to places and vehicles

***Clause*101.(1)** An authorised person who enters a place, or enters or boards a vehicle, under this Part may—

(a) inspect, examine, photograph or film anything in or on the place or vehicle; or

(b) search any part of the place or vehicle; or

(c) take samples of or from anything in or on the place or vehicle; or

(d) take extracts from, or make copies of, any documents in or on the place or vehicle; or

(e) take into or onto the place or vehicle any persons, equipment and materials that the authorised person reasonably requires for exercising any powers in relation to the place or vehicle; or

(f) require the occupier of the place, or any person in or on the place or vehicle, to give the authorised person reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (e); or

(g) if the authorised person enters or boards a vehicle—require the person in control of the vehicle—

(i) to bring the vehicle to a specified place; and

(ii) to remain in control of the vehicle at the place for a reasonable time;

to enable the authorised person to exercise the powers mentioned in paragraphs (a) to (e).

(2) A person who is required by an authorised person under subsection (1)(f) to give reasonable assistance to the authorised person in relation to the exercise of a power must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

(3) If the assistance is required to be given by a person by—

(a) answering a question; or

(b) producing a document (other than a document required to be kept by the person under this Act);

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

(4) A person who is required by an authorised person under subsection (1)(g) to take action in relation to a vehicle must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

Division 3—Other enforcement powers of authorised persons

Power to require name and address

Clause **102.(1)** An authorised person may require a person to state the person's name and address if the authorised person—

(a) finds the person committing an offence against this Act; or

(b) finds the person in circumstances that lead, or has information that leads, the authorised person to suspect on reasonable grounds the person has just committed an offence against this Act.

(2) When making the requirement, the authorised person must warn the person it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.

(3) The authorised person may require the person to give evidence of the correctness of the person's name or address if the authorised person suspects, on reasonable grounds, that the name or address given is false.

(4) A person must comply with an authorised person's requirement under subsection (1) or (3), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

(5) The person does not commit an offence against this section if—

(a) the authorised person required the person to state the person's name and address on suspicion of the person having committed an offence against this Act; and

(b) the person is not proved to have committed the offence.

Power to require information from certain persons

***Clause*103.(1)** This section applies if an authorised person suspects, on reasonable grounds—

(a) an offence against this Act has happened; and

(b) a person may be able to give information about the offence.

(2) The authorised person may require the person to give information about the offence.

(3) When making the requirement, the authorised person must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.

(4) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

(5) It is a reasonable excuse for the person to fail to give information if the information might tend to incriminate the person.

(6) The person does not commit an offence against this section if the information sought by the authorised person is not in fact relevant to the offence.

Power to require production of quotas etc.

***Clause*104.(1)** An authorised person may—

(a) require a producer to produce to the authorised person—

(i) a quota, entitlement or other authority held by the producer relating to the producer's business; or

(ii) a document relating to the production or sale of eggs; and

(b) inspect, take extracts from or make copies of a document produced to the authorised person under paragraph (a).

(2) A person must comply with a requirement made of the person under subsection (1)(a), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) An authorised person may keep a document under subsection (1)(b) to take an extract from it or make a copy of it;

(4) The authorised person must return the document to the person who produced it as soon as practicable after taking the extract or making the copy.

Division 4—Other enforcement matters

Restraining orders

***Clause*105.(1)** The Company may bring a proceeding in a District Court for an order restraining a person from—

(a) continuing or repeating a particular activity; or

(b) committing an offence against this Act.

(2) The Court may make an order under subsection (1)(a) if it is satisfied the person will commit an offence against this Act if the person continues or repeats the activity.

(3) The Court may make an order under subsection (1)(b) if it is satisfied that the person has been convicted of an offence against this Act on at least 3 separate occasions.

(4) If a person contravenes an order under this section, the person commits an offence against this subsection.

Maximum penalty for subsection (4)—100 penalty units.

False or misleading information

***Clause*106.(1)** A person must not—

(a) state anything to an authorised person that the person knows is false or misleading in a material particular; or

(b) omit from a statement made to an authorised person anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—40 penalty units.

(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the statement made was false or misleading to the person's knowledge.

False or misleading documents

Clause **107.(1)** A person must not give to an authorised person a document containing information that the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—40 penalty units.

(2) Subsection (1) does not apply to a person if, when the person gives the document to the authorised person, the person—

(a) informs the authorised person of the extent to which the document is false, misleading or incomplete; and

(b) gives the correct information to the authorised person if the person has, or can reasonably obtain, the correct information.

Compensation

Clause **108.(1)** A person may claim compensation if the person incurs any loss or expense—

(a) because of the exercise or purported exercise of a power under this Part; or

(b) in complying with a requirement made of the person under this Part.

(2) The claim is to be made against the Company or the Authority according to whether the authorised person was at the time of exercising or purporting to exercise the power, or making the requirement, acting for the Company or the Authority.

(3) Payment of compensation may be claimed and ordered in a proceeding for—

(a) compensation brought in a court of competent jurisdiction for the recovery of compensation; or

(b) an offence against this Act brought against the person by whom the claim is made.

(4) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

Authorised person to give notice of damage

***Clause*109.(1)** An authorised person who, in the exercise of a power under this Part, damages anything must immediately give written notice of the particulars of the damage.

(2) The notice must be given to the person who appears to the authorised person to be the owner of the thing.

(3) If, for any reason, it is not practicable to comply with subsection (2), the authorised person must—

(a) leave the notice at the place where the damage happened; and

(b) ensure the notice is left—

(i) in a reasonably secure way; and

(ii) in a conspicuous position.

(4) In this section—

"owner" of a thing includes the person in possession or control of the thing.

Consent to entry by an authorised person

***Clause*110.(1)** This section applies if an authorised person intends to seek the consent of an occupier of a place to the entry of the place by the authorised person under this Part.

(2) Before seeking the consent, the authorised person must inform the occupier that the occupier may refuse to give the consent.

(3) If the consent is given, the authorised person may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must—

(a) state the occupier was informed of the occupier's right to refuse to give the consent; and

(b) state the occupier gave the authorised person consent under this Part—

(i) to enter the place; and

(ii) to exercise the powers mentioned in section 101 (General powers in relation to places and vehicles); and

(c) specify the time at and date on which the consent was given.

Evidence of consent

***Clause*111.(1)** This section applies to a proceeding if—

(a) it is material for a court to be satisfied of the consent of an occupier of a place to the entry of the place by an authorised person under this Part; and

(b) an acknowledgment under section 110 (Consent to entry by an authorised person) is not produced in evidence.

(2) In a proceeding to which this section applies, the court may assume the occupier did not consent, unless the contrary is proved.

Obstruction of authorised persons

***Clause*112.** A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

Impersonation of authorised person

***Clause*113.** A person must not pretend to be an authorised person.

Maximum penalty—80 penalty units.

PART 9—MISCELLANEOUS

Poll of producers

Clause **114.(1)** If the Minister receives a petition signed by at least 30% of the total number of producers, the Minister must inform the Company of the receipt of the petition and arrange for a poll of the producers on the question whether the compulsory marketing scheme should continue.

(2) The poll is to be conducted by the department at the expense of the Company.

(3) A regulation may be made governing eligibility to vote and other matters affecting the conduct of the poll.

(4) The Company must at the request of an officer of the department provide any information necessary for compiling a list of the producers eligible to vote at the poll.

(5) The poll is to be conducted by postal ballot.

(6) The Minister must publish the results of the poll in the Gazette and table them in the Legislative Assembly.

Prosecution of offences

Clause **115.(1)** An offence against this Act is a summary offence.

(2) A prosecution for an offence against this Act may be started only with the consent of—

(a) the chief executive of the department; or

(b) the Attorney-General.

Regulations

Clause **116.(1)** The Governor in Council may make regulations for the purposes of this Act.

(2) A regulation may be made prescribing offences for a contravention of a regulation and fixing a maximum penalty of not more than 20 penalty units for a contravention.

Expiry of Act

***Clause*117.(1)** This Act expires on 31 December 1998.

(2) The expiry of this Act does not give rise to any right to compensation.

PART 10—REPEALS, AMENDMENT AND TRANSITIONAL PROVISIONS

Repeal of the Poultry Industry Act 1988

***Clause*118.** The *Poultry Industry Act* 1988 is repealed.

Amendment of Primary Producers' Organisation and Marketing Act 1926

***Clause*119.(1)** The *Primary Producers' Organisation and Marketing Act 1926* is amended as set out in this section.

(2) Section 2 (definition **"commodity"**)—

omit **'**and eggs**'.**

(3) Section 29(1)—

omit **'**A levy may also be made by The Egg Marketing Board or The Central Queensland Egg Marketing Board as prescribed in section 29C of this Act.**'.**

(4) Section 29C—

omit.

Repeal of Hen Quotas Act 1973

***Clause*120.** The following Acts are repealed—

- *Hen Quotas Act 1973*
- *Hen Quotas Act Amendment Act 1975*

- *Hen Quotas Act Amendment Act 1978*
- *Hen Quotas Act Amendment Act 1981*
- *Hen Quotas Act Amendment Act 1987.*

Repeal of certain orders in council

***Clause*121.** The following orders in council are repealed—

- the order in council dated 19 June 1923 under the Primary Products Pools Act 1922
- the order in council dated 14 January 1926 under the Primary Products Pools Act 1922
- the order in council dated 9 January 1947 under the *Primary Producers' Organisation and Marketing Act 1926.*

Continuance of quotas

***Clause*122.(1)** An egg producer's basic hen quota in force under the *Hen Quotas Act 1973* immediately before the commencement of this Act continues in force, subject to expiry, cancellation, surrender or amendment under this Act, as if the producer to whom the quota was allocated had been granted a quota under this Act with a quota number equivalent to the allocated basic hen quota.

(2) An adjustment to hen quotas in force under the *Hen Quotas Act 1973* immediately before the commencement of this Act continues in force, subject to this Act, as if it were an adjustment to quota numbers made under this Act.

(3) A transfer approved under the *Hen Quotas Act 1973* that provides for the reversion of rights to the transferor must be regarded after the commencement of this Act as a quota lease approved as a transfer by the Authority under section 76.

Hen quota fees

***Clause*123.(1)** Section 9, and the second schedule to, the *Hen Quotas Regulation 1988* (Hen quota fees) remain in force, subject to variation or revocation by regulation under this Act, until 30 June 1994.

(2) The provisions continued in force under subsection (1) are to be construed subject to necessary changes and any further changes that may be prescribed by regulation.

Continuation of Hen Quota Committee

***Clause*124.(1)** Until a day fixed by regulation for the Authority to take over functions from the Hen Quota Committee (the **"changeover day"**), the Hen Quota Committee continues in existence and may exercise the functions and powers of the Authority under this Act.

(2) Until the changeover day, a reference in this Act to the Authority includes a reference to the Hen Quota Committee.

(3) Despite the repeal of the *Hen Quotas Act 1973*, the following sections of the Act continue to apply to the Hen Quota Committee—

- section 7 (Appointment of Committee)
- section 8 (Term of office of members)
- section 9 (Disqualifications from and vacation of office)
- section 10 (Filling of vacancies)
- section 11 (Acting chairman)
- section 12 (Deputy for member)
- section 13 (Presiding at meetings)
- section 14 (Notice and adjournment of meeting)
- section 15 (Quorum)
- section 16 (Voting)
- section 17 (Procedure)
- section 18 (Member with pecuniary interest to withdraw)
- section 19 (Subcommittee)
- section 20 (Minutes)
- section 21 (Fees, allowances and expenses).

(4) On the changeover day—

(a) the Hen Quota Committee is dissolved and its members go out of office; and

(b) the rights and liabilities of the Hen Quota Committee become rights and liabilities of the Authority; and

(c) the staff of the Hen Quota Committee become staff of the Authority without interruption of continuity of service or prejudice to existing or accruing rights in respect of employment.

(5) This section expires 6 months after the abolition date.

Continuity of proceedings

Clause**125.(1)** A legal proceeding started by or against the Hen Quota Committee before the changeover day may be continued and completed after the changeover day by or against the Authority.

(2) An application or other administrative proceeding made to or started before the Hen Quota Committee before the commencement of this Act may, if it remains undecided or uncompleted at the commencement of this Act, be decided or completed as if it were an application or administrative proceeding under the corresponding provision of this Act.

Staff of former egg marketing authorities

Clause**126.** The staff of the former egg marketing authorities become, on the transfer date, staff of the Company without interruption of continuity of service, or prejudice to existing or accruing rights in respect of employment.

Poultry Industry Fund

Clause**127.(1)** The Poultry Industry Fund under the *Poultry Industry Act 1988* (the **"Fund"**) continues in existence until abolished under this section.

(2) The Fund is to be administered by the chief executive of the department.

(3) The fund may be applied, with the Minister's approval—

(a) towards the costs of administering this Act; and

(b) for the development and improvement of the poultry industry.

(4) The Fund is to be abolished on a date fixed by regulation (the **“abolition date”**) and any money remaining to its credit must be distributed in the way prescribed by the regulation providing for its abolition.

(5) This section expires 6 months after the abolition date.