

## **MARKETING OF EGGS AMENDMENT BILL 2004**

### **EXPLANATORY MEMORANDUM (CLAUSE NOTES)**

This Bill will amend the *Marketing of Eggs Act 1945* to insert a provision for the Act to expire on 31 December 2005 or an earlier date fixed by the Governor by order published in the Gazette. The regulated system for the marketing of eggs by the Western Australian Egg Marketing Board established by the Act dates back to 1945.

The expiry of the Act is set for 18 months time by when the business of the Board will have been transferred to a producer-owned egg marketing company. These transitional arrangements will be made under a power to make regulations which is inserted by the Bill.

An explanation of each clause of the Bill follows:

#### **Clause 1: Short title**

The Act will be known as the *Marketing of Eggs Amendment Act 2004*, in accordance with normal practice.

#### **Clause 2: Commencement**

The Act will commence on a date to be fixed by proclamation.

#### **Clause 3: The Act amended**

Simply states that the amendments are to the *Marketing of Eggs Act 1945*.

#### **Clause 4: Section 38A repealed**

Repeals a clause that provided that on the winding up of the Egg Marketing Board the proceeds would be applied by the Governor for the benefit of the egg industry. This section, which is unlikely ever to have had any application, is not required because detailed transitional provisions to apply when the Board is dissolved will be included in regulations made under the proposed new section 43.

#### **Clause 5: Sections 41, 42 and 43 inserted**

This clause inserts the amendments to the principal Act as follows:

#### **New section 41: Expiry of Act and regulations**

This is the expiry provision. The Act will expire on 31 December 2005 or an earlier date fixed by the Governor by order published in the Gazette.

Logically, the *Marketing of Eggs Regulations 1945*, made under the Act, will expire also.

Immediate expiry the Act is not appropriate as it would not allow time for transitional arrangements to be put in place or for the transfer to private industry of the business of the Board. These matters will be dealt with by regulation and if the full 18 months is not required the Act may expire sooner.

The regulation making powers (and the citation of the Act) are excluded from the expiry because it may be necessary to make some transitional regulations after the expiry.

Subsection (2) states that the Board is dissolved on the day on which the Act expires.

#### **New section 42: Arrangements for staff before expiry**

This section makes provision for the employment of people appointed, employed or otherwise engaged by the Board and will ensure that no staff member can be disadvantaged by the dissolution of the Board on the expiry of the Act.

Under subclause (2), the Minister is obliged, before the expiry of the Act, to ensure that employment of each staff member is arranged with a person or body in the Public Sector or, where such employment is not arranged, that the staff member is covered by the re-deployment and redundancy provisions of Part 6 of the *Public Sector Management Act 1994*.

Except as agreed by a staff member, the remuneration, existing or accrued rights under a superannuation scheme or the continuity of service of the staff member are not affected, prejudiced or interrupted by a change in employment as provided for under the Bill or by the expiry of the Act or the dissolution of the Board.

#### **New section 43: Regulations as to matters consequent on the expiry**

Under this provision, regulations will be made to deal with matters arising from the expiry of the Act and the dissolution of the Board.

Under subclause (2), the regulation-making power is broadly drawn so that the Governor, with the approval of the Treasurer, may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to anything to be done, or that occurs, because of the expiry.

Without limiting that broad power, subclause (3) goes on to specify certain matters which may be covered by the regulations. Importantly, regulations may be made in relation to the disposition of the property of the Board and the transfer of its rights and liabilities. It is under these provisions that regulations will be made to implement the intended transfer of the business of the Board to a producer-owned egg marketing company, based on co-operative principles.

The regulations may provide for the continuation of the Board, constituted by a specified person for the purpose of doing anything under the regulations including making and submitting any outstanding annual reports and the Board's final report. The regulations may also provide for the continued application of section 34 of the Act until those reports and accompanying documents are tabled in Parliament. (Section 34 of the Act provides that the provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply in relation to the Board and its operations.)

The regulations may provide for the exemption from State tax of anything of a specified kind that occurs because of the expiry or anything of a specified kind done under the regulations or for a purpose connected with or arising out of the expiry. The principal use of this will be for an exemption from stamp duty to be allowed on the transactions involved in the transfer of the business of the Board to a producer-owned company. There are precedents for this stamp duty relief in the privatisations of other statutory marketing authorities for agricultural commodities. The necessary approval of the Treasurer for the making of the regulations will ensure that only appropriate State tax exemptions are allowed.

The regulation-making powers are based on things being done, or occurring, because of the expiry. This may raise the question whether any particular thing did,

in fact, occur because of the expiry or was done for a purpose connected with, or arising out of the expiry. To avoid doubt about this, clause 43(3) provides for any such question to be answered by a certificate in writing by the Treasurer or a person authorised by the Treasurer.

**Clause 6: *Agricultural Products Act 1929* amended**

This clause amends the *Agricultural Products Act 1929* by repealing section 2AA.

The Agricultural Products Act is an Act to regulate the packing and sale of agricultural products. In particular, it provides for the publication of grading and packing codes for agricultural products. Section 2AA provides that the Act does not apply to eggs. This was because the Marketing of Eggs Act provided for egg grading, marking and packing codes to be made by the Egg Marketing Board. As the Board will no longer be performing this function, the status of eggs as an agricultural product which may (but will not necessarily) be the subject of a grading and packing code under the Agricultural Products Act is reinstated.

**Clause 7: *Constitution Act Amendment Act 1989* amended**

This amendment removes the Egg Marketing Board from Part 3 of Schedule V of the *Constitution Acts Amendment Act 1989*. (Any member of a Board or other body specified in that part of that schedule is required to resign as a member on being elected to the legislature.)

**Clause 8: *Financial Administration and Audit Act 1985* amended**

This clause removes the Board from the list of statutory authorities under the Financial Administration and Audit Act.

**Clause 9: *Statutory Corporations (Liability of Directors) Act 1996* amended**

This clause removes the Board from the list of statutory corporations to which the duties under Part 3 of this Act apply.

**Clause 10: *Stock Diseases (Regulations) Act 1968* amended**

This clause amends the regulation-making powers of the *Stock Diseases (Regulations) Act 1968* so that egg production establishments may be required to be registered for the purpose of prevention, eradication and control of disease. With the amendment read in, section 10(j) will provide that regulations may:

“require establishments conducted as hatcheries or for the *production of eggs* or the breeding of poultry to be licensed, prescribe fees for a licence issued for that purpose, regulate the manner in which any such establishment is to be conducted and regulate, restrict or prohibit dealing in, and delivery of, eggs”.