



tasmanian legislation

TASMANIA'S CONSOLIDATED LEGISLATION ONLINE

VIEW SUMMARY

The legislation that is being viewed is valid for **As Made**.

Egg Industry Act 2002 (No. 28 of 2002)

Requested: 18 Nov 2016

Consolidated: As Made

INFORMATION

Notes:

Links:

Table of Amending

Instruments:

[\(click to view Table of Amendments\)](#)

Responsible Minister and
Department:

See the latest Administrative Arrangement Order or view the [Information Guides to Legislation](#)

CONTENTS

Egg Industry Act 2002

Part 1 - Preliminary

1. Short title

2. Commencement

3. Interpretation

4. Application of Act

Part 2 - Egg production

5. Approval of egg production programs

6. Adoption of egg production programs

7. Revocation of approvals

8. Restriction on production of eggs for sale

9. Audit of approved programs

Part 3 - Miscellaneous

10. Inspectors

11. Powers of inspectors

12. Search warrants

13. Accredited auditors

14. Delegation
 15. Applications for exemption
 16. Certificates of exemption
 17. Appeals
 18. Interference with auditors and inspectors
 19. False or misleading statements
 20. Evidence
 21. Offences by bodies corporate
 22. Regulations
 23. Administration of Act
 24. Transitional provisions
 25. Egg Industry Act 1988 repealed
 26. Consequential amendments
- Schedule 1 - Consequential Amendments



Egg Industry Act 2002

An Act to provide for improvements in the quality of egg production and in associated aspects of human health, animal welfare and food safety, to repeal the *Egg Industry Act 1988*, to make consequential amendments to other legislation and for related purposes

[Royal Assent 12 July 2002]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the *Egg Industry Act 2002*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

accredited auditor means a person who is accredited under section 13 as an auditor for the

purposes of this Act;

approved egg producer means an egg producer whose egg production program has been approved under [section 5](#) or whose adoption of an egg production program has been approved under [section 6](#);

certificate of exemption means a certificate of exemption issued under [section 16](#);

egg producer means a person by whom, or on whose behalf, eggs are produced and, where the eggs are produced under a sharefarming or partnership agreement, includes every party to the agreement;

egg production program means a program for the production of eggs;

eggs means hen eggs in their natural state;

fowl means a domesticated fowl of the genus *Gallus*;

hen means a female fowl that is more than 18 weeks old;

inspector means a person holding appointment as an inspector under [section 10](#);

notice means notice in writing;

regulations means regulations made and in force under this Act;

relevant criteria means the following criteria in their application to egg production programs:

- (a) food safety;
- (b) animal welfare;
- (c) biosecurity;
- (d) environmental impact;
- (e) labelling standards;
- (f) such other criteria as may be prescribed in the regulations;

Secretary means the Secretary of the Department;

sell means –

- (a) sell, barter or exchange; or
- (b) agree or offer to sell, barter or exchange; or
- (c) expose, store or deliver for sale, barter or exchange; or
- (d) authorise, direct, cause, suffer or permit any act referred to in [paragraph \(a\)](#), [\(b\)](#) or [\(c\)](#) of this definition.

4. Application of Act

- (1) This Act applies to a person who, whether alone or in association with others, keeps, or causes or allows to be kept, a total of more than 20 hens.
- (2) This Act does not apply to an employee of an egg producer in his or her capacity as such an employee.

PART 2 - Egg production

5. Approval of egg production programs

- (1) A person may apply to the Secretary for approval of an egg production program.
- (2) The application is to –
 - (a) be in a form approved by the Secretary; and
 - (b) be accompanied by the prescribed fee, if any; and
 - (c) contain any particulars the Secretary determines as being necessary to assess the application; and
 - (d) address the relevant criteria.
- (3) In deciding whether to grant the approval, the Secretary may –
 - (a) require the applicant to provide further information or evidence; and
 - (b) consult with such egg producers' representatives, egg consumers' representatives and other persons as the Secretary considers appropriate.
- (4) On receipt of the application, the Secretary may –
 - (a) grant the approval if the Secretary considers that the program is of a satisfactory standard in terms of the relevant criteria; or
 - (b) refuse to grant the approval if not so satisfied.
- (5) The approval may be granted unconditionally or subject to any conditions the Secretary considers appropriate.
- (6) If the Secretary refuses to grant the application, the Secretary must give the applicant notice of –
 - (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) the applicant's right of appeal.

6. Adoption of egg production programs

- (1)** An egg producer may apply to the Secretary for approval to adopt an egg production program that the Secretary has already approved.
- (2)** The application is to –
 - (a)** be in a form approved by the Secretary; and
 - (b)** be accompanied by the prescribed fee, if any; and
 - (c)** set out full particulars of the egg production program sought to be adopted; and
 - (d)** contain such other information or evidence as the Secretary requires.
- (3)** Section 5(3) has the same application to an application under this section as it does to an application under that section.
- (4)** On receipt of the application, the Secretary may –
 - (a)** grant the approval if satisfied that the program is suitable for adoption by the applicant; or
 - (b)** refuse to grant the approval if not so satisfied.
- (5)** The approval may be granted unconditionally or subject to any conditions the Secretary considers appropriate.
- (6)** If the Secretary grants the approval –
 - (a)** the egg production program becomes the egg producer's egg production program; and
 - (b)** the egg producer becomes an approved egg producer.
- (7)** If the Secretary refuses to grant the application, the Secretary must give the applicant notice of –
 - (a)** the refusal; and
 - (b)** the reasons for the refusal; and
 - (c)** the applicant's right of appeal.

7. Revocation of approvals

- (1)** The Secretary may, by notice, revoke an approval granted under section 5 or 6 if satisfied that –
 - (a)** in the case of an approval under section 5 –
 - (i)** an audit has not been carried out in accordance with section 9; or
 - (ii)** a direction under section 9(4) has not been complied with; or

(b) a condition of the approval has not been complied with; or

(c) it is necessary to do so in the circumstances.

(2) If the Secretary revokes an approval, the Secretary may determine a period within which the person is prohibited from seeking a further approval.

(3) On the revocation of an approval, the Secretary must notify the person of—

(a) the revocation and the reasons for the revocation; and

(b) any period determined under subsection (2); and

(c) the applicant's right of appeal.

8. Restriction on production of eggs for sale

(1) A person must not keep hens for the purpose of producing eggs for sale unless—

(a) the person is an approved egg producer; or

(b) the eggs so produced are sold to an approved egg producer whose egg production program includes the egg production of that person.

Penalty:

In the case of—

(a) a body corporate, a fine not exceeding 50 penalty units; and

(b) an individual, a fine not exceeding 20 penalty units.

(2) If it is proved in proceedings for an offence against subsection (1) that at or during a particular time or period a person was keeping a total of more than 20 hens, it is to be presumed, in the absence of evidence to the contrary, that the person was, at or during that time or period, keeping those hens for the purpose of producing eggs for sale.

(3) In this section,

eggs for sale does not include fertile eggs for sale for hatchery purposes.

9. Audit of approved programs

(1) Within 3 months after the approval of an egg producer's egg production program, the egg producer must have that program audited by an accredited auditor.

Penalty:

In the case of—

(a) a body corporate, a fine not exceeding 25 penalty units; and

(b) an individual, a fine not exceeding 10 penalty units.

(2) If—

(a) an approved egg production program being audited under subsection (1) includes a component of eggs that are supplied by a person who is not an approved egg producer; and

(b) the auditor is not satisfied that the person required to have the audit carried out has taken reasonable steps to ensure that those eggs are being produced and supplied in accordance with the approved program—

the audit under that subsection may, in the auditor's discretion, extend to such part of the egg production of the person who is not an approved egg producer as is included in the approved program.

(3) Within 21 days after receiving the auditor's report, the egg producer must provide the Secretary with a copy of the report and a certificate from the auditor—

(a) certifying that the auditor has audited the egg production program; and

(b) stating whether, in the auditor's opinion, the production of eggs is being carried out in accordance with the approved egg production program.

Penalty:

In the case of—

(a) a body corporate, a fine not exceeding 25 penalty units; and

(b) an individual, a fine not exceeding 10 penalty units.

(4) If the auditor states in the report that he or she is of opinion that the production of eggs is not being carried out in accordance with the approved egg production program, the Secretary may, by notice, direct the egg producer to—

(a) take action within a specified period to ensure that eggs are produced in accordance with that program; and

(b) have that program audited on a further occasion.

(5) An egg producer who is given a direction under subsection (4) must comply with that direction.

Penalty:

In the case of—

(a) a body corporate, a fine not exceeding 25 penalty units; and

(b) an individual, a fine not exceeding 10 penalty units.

(6) The costs of an audit under this section are to be met by the egg producer who is required to have the audit carried out.

(7) If an egg production program to which subsection (1) or (5) applies is conducted by a partnership or under a sharefarming agreement –

(a) each partner in the partnership or each party to the sharefarming agreement is liable to discharge the obligation imposed by that subsection; but

(b) the discharge of the obligation by one partner in the partnership or by one party to the sharefarming agreement discharges the obligation for all of the partners in the partnership or all of the parties to the sharefarming agreement.

PART 3 - Miscellaneous

10. Inspectors

(1) The Secretary may appoint persons as inspectors for the purposes of this Act.

(2) An inspector may be appointed generally or for a specified purpose.

(3) A person who is a State Service officer or State Service employee may hold the office of inspector in conjunction with his or her State Service employment.

(4) An inspector is to exercise power subject to any conditions specified by the Secretary.

11. Powers of inspectors

(1) An inspector may –

(a) enter, inspect and examine any premises if the inspector believes on reasonable grounds that hens are being kept at those premises for the purpose of producing eggs for sale contrary to this Act; and

(b) inspect, take copies of or seize any records, documents or other matter kept at any premises or in any conveyance in relation to the sale or production of eggs; and

(c) instruct a person who is apparently keeping hens on the premises for the purpose of producing eggs for sale but who is not an approved egg producer, or supplying an approved egg producer, to cease keeping hens for that purpose; and

(d) do anything else necessary or desirable to ensure compliance with an approved egg production program; and

(e) exercise other prescribed powers.

(2) A person must not fail to comply with an instruction under subsection (1)(c).

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 25 penalty units; and

(b) an individual, a fine not exceeding 10 penalty units.

(3) If a person fails to comply with an instruction under subsection (1)(c), the inspector may, by notice, close the egg production operation.

(4) An inspector exercising power under this section is not entitled to enter premises, or a part of premises, used for residential purposes, except –

(a) with the consent of the occupier or owner of the premises; or

(b) under the authority of a search warrant.

12. Search warrants

(1) An inspector may apply to a justice of the peace for the issue of a search warrant in respect of premises if –

(a) it appears to the inspector that the premises, or any part of them, are used for residential purposes; and

(b) the inspector proposes to, and has reasonable grounds for proposing to, exercise a power under section 11 in respect of the premises; and

(c) the occupier of the premises has refused to allow the inspector entry to the premises for that purpose or the inspector believes on reasonable grounds that the occupier is not likely to allow such entry.

(2) If a justice of the peace is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for doing so, the justice may issue a search warrant authorising an inspector named in the warrant, and any assistants the inspector considers necessary, to enter the premises and exercise all or specified powers of an inspector under section 11 in respect of the premises.

(3) In addition to any other requirement, a search warrant issued under this section must state –

(a) the grounds for the issue of the warrant; and

(b) the premises to be searched; and

(c) any conditions to which the warrant is subject; and

(d) whether entry is authorised to be made at any time or during stated hours; and

(e) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.

(4) A member of the police force may accompany an inspector executing a search warrant issued under this section and may take all reasonable steps to assist in the exercise of the functions of the inspector under this Act.

(5) Before executing a search warrant, the inspector named in the warrant or a person assisting the inspector must announce that he or she is authorised by the warrant to enter the premises

and give any person at the premises an opportunity to allow entry to the premises.

(6) The inspector or a person assisting the inspector need not comply with subsection (5) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the search warrant is not frustrated.

(7) If an occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the inspector must give that person a copy of the warrant.

13. Accredited auditors

(1) The Secretary may accredit a person as an auditor for the purposes of this Act if the Secretary is satisfied that the person has extensive skill, knowledge or experience in relation to any 2 or more relevant criteria.

(2) The Secretary may, by notice, revoke a person's accreditation as an auditor.

(3) The Secretary may, from time to time, cause a list of accredited auditors to be published in the *Gazette* or in any newspaper.

(4) A person who is a State Service officer or State Service employee may hold the office of an accredited auditor in conjunction with his or her State Service employment.

14. Delegation

The Secretary may delegate any of his or her functions or powers under this Act, other than this power of delegation.

15. Applications for exemption

(1) A person may apply to the Secretary to be exempted from the application of this Act or any provision of it.

(2) The application is to –

(a) be in a form approved by the Secretary; and

(b) be accompanied by the prescribed fee, if any; and

(c) set out the applicant's reason for seeking the exemption; and

(d) be accompanied by such other information and evidence as the Secretary requires.

(3) Section 5(3) has the same application to an application under this section as it does to an application under that section.

16. Certificates of exemption

(1) On receipt of an application for exemption, the Secretary may –

(a) grant the application; or

(b) refuse to grant the application.

(2) If the Secretary grants the application –

(a) the Secretary is to issue the applicant with a certificate of exemption; and

(b) the exemption may be for an indefinite period or limited to such period as the Secretary determines and specifies in the certificate.

(3) If the Secretary refuses to grant the application, the Secretary is to give the applicant notice of –

(a) the refusal; and

(b) the reasons for the refusal; and

(c) the applicant's right of appeal.

17. Appeals

(1) If a person is aggrieved by a decision to which this section applies, the person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision.

(2) This section applies to the following decisions of the Secretary:

(a) to refuse to grant an approval –

(i) of an egg production program; or

(ii) to adopt an egg production program;

(b) to impose a condition on an approval;

(c) to revoke an approval;

(d) to refuse to grant an application for exemption.

(3) An application for review is to be made within 21 days after the person is notified of the decision to be reviewed.

(4) If this section commences before the *Magistrates Court (Administrative Appeals Division) Act 2001*, the person aggrieved may appeal to a magistrate.

18. Interference with auditors and inspectors

A person must not obstruct, hinder, threaten or attempt to influence –

(a) an accredited auditor in the audit of an egg production program under this Act; or

(b) an inspector in the exercise of a power under this Act.

Penalty:

In the case of—

- (a) a body corporate, a fine not exceeding 50 penalty units; and
- (b) an individual, a fine not exceeding 20 penalty units.

19. False or misleading statements

A person must not, in giving any information under this Act —

- (a) make a statement that the person knows is false or misleading in a material particular; or
- (b) omit any matter from a statement knowing that without the matter the statement is misleading in a material particular.

Penalty:

In the case of—

- (a) a body corporate, a fine not exceeding 50 penalty units; and
- (b) an individual, a fine not exceeding 20 penalty units.

20. Evidence

In any proceedings, a certificate signed by the Secretary stating that a person was or was not approved under this Act is evidence and, in the absence of evidence to the contrary, proof of the matters set out in the certificate.

21. Offences by bodies corporate

- (1) If a body corporate commits an offence against this Act, each person concerned in the management of the body corporate is taken also to have committed the offence and may be convicted of the offence unless the person shows that the act or omission constituting the offence took place without the person's knowledge or consent.
- (2) A person referred to in subsection (1) may be convicted of an offence against this Act whether or not the body corporate is charged with or convicted of the offence.

22. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) Without limiting the generality of subsection (1), the Governor may make regulations to regulate the procedure to be followed in respect of matters relating to the seizure of any thing or matter seized under this Act.
- (4) The regulations may —
 - (a) provide that a contravention of, or a failure to comply with, any of the

regulations is an offence; and

(b) in respect of such an offence, provide for the imposition of a fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

(5) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Secretary.

23. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Primary Industries, Water and Environment; and

(b) the department responsible to the Minister for Primary Industries, Water and Environment in relation to the administration of this Act is the Department of Primary Industries, Water and Environment.

24. Transitional provisions

(1) In this section –

former Act means the *Egg Industry Act 1988*;

former licensee means a person who, immediately before the transition day, was the holder of a licence under section 23, 28(3) or 30 of the former Act;

transition day means the day on which section 8 commences;

transition period means the 6 month period immediately following the transition day.

(2) This Act does not apply to an egg producer who is a former licensee until whichever of the following first occurs:

(a) the transition period expires;

(b) the Secretary grants, or refuses to grant, an approval under section 5 or 6.

(3) A former licensee whose licence under the former Act was subject to conditions must continue to comply with those conditions during the transition period as if that Act and that licence were still in force.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 50 penalty units; and

(b) an individual, a fine not exceeding 20 penalty units.

(4) The Governor may make regulations of a savings or transitional nature consequent on the enactment of this Act.

(5) A provision of a regulation made under subsection (4) may take effect on the transition day or a later day.

25. Egg Industry Act 1988 repealed

The Egg Industry Act 1988 is repealed.

26. Consequential amendments

The legislation specified in Schedule 1 is amended as specified in that Schedule.

SCHEDULE 1 - Consequential Amendments

Section 26

Government Business Enterprises Act 1995

1. Schedule 1 is amended by omitting

Egg Marketing Board

from Part 2.

2. Schedule 2 is amended by omitting

Egg Marketing Board

3. Schedule 3 is amended by omitting

Egg Marketing Board

4. Schedule 4 is amended by omitting

Egg Marketing Board

Ombudsman Act 1978

1. Schedule 1 is amended by omitting item 17.

State Service Act 2000

1. Schedule 1 is amended by omitting

Egg Marketing Board Chairperson of the Egg Marketing Board

from Part 2.

Administrative Arrangements Order 2002

1. Schedule 1 is amended by omitting

EGG MARKETING BOARD

Egg Industry Act 1988

[Second reading presentation speech made in:

House of Assembly on 22 MAY 2002

Legislative Council on 20 JUNE 2002]