MARKETING OF EGGS ACT AMENDMENT BILL 1972

Legislative Council, 26 September 1972, page 1534

Second reading

**The Hon. T. M. CASEY (Minister of Agriculture):** I move:

*That this Bill be now read a second time.*

This measure, which amends the principal Act, the Marketing of Eggs Act, 1941, as amended, provides for a number of quite important changes relating to the composition of the South Australian Egg Board, the qualifications of voters at elections and the general powers of the board. In addition, opportunity has been taken to effect other amendments to the principal Act, the needs for which has been demonstrated over the years. The nature of the amendments proposed suggests that the most convenient way of dealing with them would be by a consideration of the clauses of the measure in some detail.

Clauses 1 and 2 are formal. Clause 3 amends the interpretation section of the principal Act, section 2, by (a) inserting a definition of “declared organization”, the need for which will be demonstrated in connection with the explanation offered in relation to clause 7; (b) inserting a definition of “eligible candidate”, the need for which will be shown in connection with the explanation of clause 7; (c) striking out the definition of “licensed collector”, which will become redundant; (d) simplifying the definition of “producer” so that it accords, in terms of the number of hens necessary to qualify as a producer, with the appropriate Commonwealth Acts; previously there was no difference of one hen and that difference caused some confusion; (e) inserting a definition of “producer agent”; and (f) making provision for an “appointed day” from which day the reconstruction of the board shall take effect. Clause 4 merely empowers the Minister to fix a day as being the day on and from which the board shall be constituted in the manner provided for by this Bill.

Clause 5 substantially amends section 4 of the principal Act, which provides for the composition of the board. At present the board consists of six persons appointed by the Governor, of whom three are producers elected by producers, two are persons knowledgeable in the business of marketing eggs (of whom one must have the ability to represent the interests of retailers of eggs) and the chairman, who, in the terms of the present Act, must not be connected with the industry. The composition proposed by the present Bill will be six persons—three elected by producers and three appointed by the Governor, with both the Chairman and the Deputy Chairman appointed from those appointed by the Governor. There is, as will be seen, a change of emphasis on the background of the three non-elected members of the board, which reflects the experience of the activities of the board over the past years and also the view of the Government as to the likely future activities of the board.

Put shortly, as with all statutory boards of this nature, there is a clear need for the board to involve itself in all aspects of egg marketing, including, if necessary, entry into fields of processing eggs. It is essential for the board to involve itself in these matters if it is to operate for the benefit of producers. To a large extent, in the case of primary products the future problems of marketing assume ever-increasing importance. It is not sufficient that a good quality egg be produced: it must also be marketed in such a way as to give the best return to the producer as well as the best value to the consumer. The net result of this approach is to raise some questions of the future position of representation by the “trade” on the board, particularly whether the competitive position of the board may, to some extent at least, be inhibited by the specific appointment of outside trade representatives. This is, of course, not to deny the valuable contribution that was, in the developmental stages of the board, made by such representatives. For these reasons then, no limitation relating to the background of the three members appointed by the Governor is now proposed.

Clause 6 again makes a change in qualifications for voters at elections for the three members who comprise half the board, in that the number of hens that must be kept in order to qualify for a vote has been increased from 250 hens to 500 hens. The number of hens that must be kept to qualify for a vote was originally fixed at one-tenth of the number of hens that must be kept to support a viable commercial enterprise. On current figures, this number is now of the order of 5,000 hens, since it seems appropriate to maintain this relationship, so the new voting qualification has been increased to one-tenth of 5,000— 500. In addition, provision is made here for the nomination, by firms or partnerships that in their capacity qualify as voters, of a person to vote on their behalf. The mechanics of this nomination are dealt with by the amendments proposed by clause 7 in relation to the re-enacted section 4b.

Clause 7 also proposes the enactment of a new section 4c, which imposes two further and important qualifications for nomination as a condition for election as a member of the board. The first qualification is that the candidate or the firm of which he is the nominee markets through the board or an agent of the board at least 10 dozen eggs for each leviable hen. The reason for this is clear. In the terms of the present marketing arrangements it is quite lawful for a producer to market no eggs at all through the board or only some of his eggs: for example, all or some of his eggs could be sold in other States. It is patently absurd that such a person should be eligible for election to a board that he himself has, in his own business practices, rejected. In passing, it may be mentioned that eggs retained or disposed of for hatching are for the purposes of this provision regarded as having been marketed through the board. The second qualification is, in effect, that the proposed candidates shall not hold an executive or administrative position in an organization declared by the Minister for the purposes of this section. An organization that may be declared is one that has amongst its objects or functions the marketing or processing of or otherwise dealing with eggs. This limitation is, I suggest, consistent with the proposal to ensure that the activities of the board are not inhibited by direct representation of “trade” interests at that level. The grounds for this proposal have been mentioned in relation to the explanation of clause 5 of this Bill.

Clause 8 provides for three-year terms for elected members, being the same period that was previously provided. However, to ensure some continuity in membership of the board, as reconstructed, it is proposed that the first members shall be elected for two, three and four-year terms to be decided by lot; thereafter, all terms will be for three years. Clause 9 is, in effect, consequential on the proposals already discussed. Clause 10 makes formal provision for the Chairman or, in his absence, the Deputy Chairman to preside at a meeting of the board. Clause 11 is a provision that will enable the board to make appropriate superannuation arrangements for its employees.

Clause 12 repeals section 18 and section 18a of the principal Act and enacts a new section 18 in their place. Former section 18 prevented the board establishing an egg floor except in certain limited circumstances. It is now proposed that the board’s powers to establish an egg floor will not be so restricted but that it will be obliged to give advance warning of its intention to persons likely to be affected. At proposed new section 18 the board has also been granted a plenitude of power to carry out its functions.

Clause 13 is merely an amendment consequential on the removal of references to “licensed collectors”. Clause 14 amends section 19 of the principal Act which deals with the licensing of agents of the board. The special provisions relating to persons holding a licence to export eggs from the Commonwealth have been removed, as these provisions are now redundant, and provisions providing for an appeal against a decision of the board to cancel a licence of an agent of the board have been inserted.

Clause 15 enacts a new section 20 in the principal Act in lieu of the former section 20, which provided for the licensing of “collectors of eggs”. Although the form of the proposed new section 20 is new, in fact the provision gives full effect to a concept that has developed over a number of years. Under section 23 of the Act the board has power to exempt certain producers from the obligation of delivering their eggs to the board, and the effect of this exemption has been to allow these producers to sell direct to the public. In many cases the “exemption” provided required the producer to stamp and grade his eggs with the board stamp. In the Government’s view it is desirable that this situation should be regularized, and producers in this category should have their status properly recognized. An amendment proposed in relation to section 23 will give all exempted producers a period of 12 months in which to apply for producer agent licences, and it is the intention that such licences should be freely available to former exempted producers.

Clause 16 repeals and re-enacts section 21 of the Act which relates to the obligation of a producer to sell his eggs to the board. The re-enactment, which is self-explanatory, provides for amendments that are consequential on the provisions relating to producer agents. In addition, in proposed new subsection (3) the expression “merchantable quality” has been spelt out in somewhat greater detail. This clause also inserts a new and quite important provision as proposed section 21a. The board is increasingly concerned at the number of unbranded eggs that are appearing in some retail stores. On inquiry, it is alleged that these eggs were produced by persons who were not “producers” within the meaning of the Act; that is, they were obtained from persons who kept 20 or fewer hens. However there is some suggestion, to put it no higher, that many of the eggs have in fact been improperly purchased from producers. Accordingly, this provision makes it an offence for a storekeeper to have in his possession for sale unstamped eggs. This will leave untouched the right of the true “non-producer” to dispose of his eggs direct to the public.

Clause 17 amends section 23 of the principal Act which has been adverted to earlier in relation to clause 15. This section can now serve its original and quite proper purpose. Subsection (4) of this section, a general exemption provision, is proposed to be repealed, as in practice it has been found quite difficult to police. In lieu of this it is proposed that the board will grant particular exemptions to cover these cases. In place of this repealed subsection a subsection providing for a period of transition so that former exempted producers may obtain producer agent licences has been enacted.

Clause 18 makes amendments to section 24 of the Act that are consequential on the amendments already discussed. Clause 19 amends section 30 of the Act which relates to payments to producers to the end that the board will be able to make premium payments to encourage the production of eggs with desirable characteristics. Clause 20 is an attempt to deal with a perennial problem that faces those concerned with orderly marketing schemes, the problem being that of section 92 of the Constitution. Suffice it to say that within the limits laid down in Harper v. The State of Victoria (the most recent High Court decision in the matter) it goes as far as it can to control this interstate traffic in eggs.

Clause 21 is an evidentiary provision which in effect throws on a defendant in proceedings the onus of proving that he is not a producer as defined. Since the facts on which a person is deemed to be a producer are peculiarly within his knowledge, this seems a reasonable burden to impose. Clause 22 amends section 34 of the principal Act that sets out the regulating-making power, and in general the heads of power sought to be inserted reflect the growing interest of the board in marketing and presentation of eggs and egg products. The other amendments to this section relate to formal matters in connection with elections under the Act and also increase the maximum fine that can be imposed under the regulations from $100 to $200.

Clause 23 repeals section 35 of the principal Act which in its latest amended form gave the Act life until September 30, 1973. It is in the Government’s view quite unreasonable to give such an apparently limited life to a statutory board that is expected to engage in commercial and quasi-commercial transactions and dealings and such a limitation could in one sense at least inhibit its activities. Clause 24 amends the schedule to the principal Act and has the effect of slightly altering the boundaries of the electoral districts to the end that they will, as far as possible, contain a similar number of units. On the basis of existing units, the electoral districts, if the amendment is agreed to, will be comprised as follows: electoral district No. 1—131 units; electoral district No. 2—136 units; and electoral district No. 3—147 units. This compares with the old figures of 85, 163 and 166 units.

The Hon. C. R. STORY secured the adjournment of the debate.