



Egg Industry Service Provision Act 2002

No. 116, 2002

An Act relating to service provision for the egg industry

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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An Act relating to service provision for the egg industry

[Assented to 2 December 2002]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

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

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2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Simplified outline

The following is a simplified outline of this Act and the *Egg Industry Service Provision (Transitional and Consequential Provisions) Act 2002*:

This Act provides for a company to be declared as the industry services body for the Australian egg industry (see Part 2).

It also provides for the industry services body to receive funding from the Commonwealth (see Part 3).

The *Egg Industry Service Provision (Transitional and Consequential Provisions) Act 2002* provides for transfers of assets and liabilities to the industry services body from the Rural Industries Research and Development Corporation (which provided services to the Australian egg industry at the time this Act was enacted).

4 Definitions

In this Act, unless the contrary intention appears:

Australia, when used in a geographical sense, includes the external Territories.

egg means an egg of a domesticated chicken.

eligible body means a body that is registered under the *Corporations Act 2001* as a company limited by guarantee.

funding contract means a contract entered into under section 7.

industry services body means the body declared to be the industry services body under subsection 6(1).

matching amounts means:

- (a) amounts of levy imposed under subclause 3(1) of Schedule 16 to the *Primary Industries (Excise) Levies Act 1999* at a rate set under paragraph 4(a) of that Schedule and received by the Commonwealth on or after the transfer time; and
- (b) amounts a person is liable to pay under section 7 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to the levy mentioned in paragraph (a) of this definition that are received by the Commonwealth on or after the transfer time.

Note: Section 7 of the *Primary Industries Levies and Charges Collection Act 1991* concerns liability of intermediaries.

matching payments means payments referred to in paragraph 7(1)(c).

Presiding Officer means:

- (a) in relation to the House of Representatives—the Speaker of the House of Representatives; and
- (b) in relation to the Senate—the President of the Senate.

promotion amounts means:

- (a) amounts of levy (***egg levy***) imposed on eggs under Schedule 27 to the *Primary Industries (Excise) Levies Regulations 1999* and received by the Commonwealth on or after the transfer time; and
- (b) amounts a person is liable to pay under section 7 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to egg levy that are received by the Commonwealth on or after the transfer time; and
- (c) amounts payable under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to egg levy that are received by the Commonwealth on or after the transfer time.

Note: Section 7 of the *Primary Industries Levies and Charges Collection Act 1991* concerns liability of intermediaries and section 15 of that Act concerns penalty for late payment.

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promotion payments means payments referred to in paragraph 7(1)(a).

R&D amounts means:

- (a) amounts of levy (***laying chicken levy***) imposed under subclause 3(1) of Schedule 16 to the *Primary Industries (Excise) Levies Act 1999* at a rate set under paragraph 4(a) of that Schedule and received by the Commonwealth on or after the transfer time; and
- (b) amounts a person is liable to pay under section 7 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to laying chicken levy that are received by the Commonwealth on or after the transfer time; and
- (c) amounts payable under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to laying chicken levy that are received by the Commonwealth on or after the transfer time.

Note: Section 7 of the *Primary Industries Levies and Charges Collection Act 1991* concerns liability of intermediaries and section 15 of that Act concerns penalty for late payment.

R&D payments means payments referred to in paragraph 7(1)(b).

transfer time means the time declared as the transfer time under section 8 of the *Egg Industry Service Provision (Transitional and Consequential Provisions) Act 2002*.

5 Application of this Act

This Act applies both within and outside Australia.

Part 2—Declaration of the industry services body

6 Declaration of industry services body

- (1) The Minister may, in writing, declare an eligible body to be the industry services body if:
- (a) the Minister is satisfied that, if the body is so declared, it will comply with its obligations under the funding contract and this Act; and
 - (b) the Commonwealth and the eligible body have entered into a funding contract.

Note 1: For information about the assets and liabilities of the eligible body first declared as the industry services body, see the *Egg Industry Service Provision (Transitional and Consequential Provisions) Act 2002*.

Note 2: Subsection 33(3) of the *Acts Interpretation Act 1901* provides for the repeal, variation etc. of instruments.

- (2) A declaration under this section must specify the day on and after which the relevant body is to be the industry services body. That day must not be earlier than the day after the day, or the later of the days (as the case may be), that paragraph (3)(a) is complied with.
- (3) The Minister must cause a copy of each declaration under this section to be:
- (a) laid before each House of the Parliament or, if a House is not sitting, presented to the Presiding Officer of that House for circulation to the members of that House and tabling on the next sitting day, within 5 days after the declaration is made; and
 - (b) published in the *Gazette* within 14 days after the declaration is made.
- (4) For the purposes of subsection (3), if a House has been dissolved and the newly-elected House has not met when a declaration is provided to the Presiding Officer, circulation to the persons who were members of that House immediately before the dissolution is taken to be circulation to the members of the House.

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- (5) To avoid doubt, the function of a Presiding Officer of receiving, circulating and tabling a declaration under subsection (3) is a function of the Presiding Officer for the purposes of the *Parliamentary Presiding Officers Act 1965*.
- (6) A declaration is not invalid merely because it has not been published as required under paragraph (3)(b).

Part 3—Funding of the industry services body

7 Funding contract

- (1) The Minister may, on behalf of the Commonwealth, enter into a contract for the purposes of this subsection with an eligible body that provides for the Commonwealth to make payments of the following kinds to the body if the body is declared to be the industry services body:
 - (a) payments referred to as *promotion payments*;
 - (b) payments referred to as *R&D payments*;
 - (c) payments made in respect of particular financial years, referred to as *matching payments*.
- (2) Before entering into a contract for the purposes of subsection (1), the Minister must be satisfied that the terms of the contract make adequate provision to ensure that:
 - (a) promotion payments are spent by the body on the promotion of eggs and the provision of industry services for the benefit of the Australian egg industry; and
 - (b) R&D payments are spent by the body on research and development activities for the benefit of the Australian egg industry; and
 - (c) matching payments are spent by the body on research and development activities for the benefit of the Australian egg industry and the Australian community generally.
- (3) The contract may require the Commonwealth to pay amounts up to, but not exceeding, the limits applicable under section 8.

Note: For example, the contract may provide that the Commonwealth will pay a lesser amount so it can deduct the costs of collecting promotion amounts and R&D amounts and have the capacity to deal appropriately with refunds and payments made in error.
- (4) The contract may include provisions relating to assets and liabilities that are transferred to the body under the contract or the *Egg Industry Service Provision (Transitional and Consequential*

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Provisions) Act 2002. This subsection does not impliedly limit the matters that may be included in the contract.

- (5) This section does not impliedly limit the executive power of the Commonwealth to enter into agreements.

8 Appropriation for payments under funding contract

- (1) The Consolidated Revenue Fund is appropriated for the purposes of payments by the Commonwealth under the funding contract.

Overall limits for payments

- (2) The total limit on the appropriation for the purposes of each type of payment under the funding contract is:
- (a) for promotion payments—the total amount of promotion amounts; and
 - (b) for R&D payments—the total amount of R&D amounts; and
 - (c) for matching payments—the total amount of matching amounts.

Matching payments—annual limit

- (3) For matching payments in respect of a particular financial year, the limit on the appropriation is the lesser of:
- (a) 0.5% of the amount determined by the Minister to be the gross value of egg production in Australia in that financial year; and
 - (b) 50% of the amount spent by the industry services body in that financial year on activities that qualify, under the funding contract, as research and development activities.
- (4) For the purposes of subsection (3), the regulations may prescribe the manner in which the Minister is to determine the gross value of egg production in Australia in a financial year.

Matching payments—unmatched R&D excess

- (5) If there is an unmatched R&D excess for a financial year, the amount spent by the eligible body in the following financial year

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on activities that qualify, under the funding contract, as research and development activities is taken, for the purposes of this section (including for the purposes of this subsection and subsection (6)), to be increased by the amount of the unmatched R&D excess.

Note: This means that research and development expenditure that is not “50% matched” in one financial year because of the cap in paragraph (2)(c) or (3)(a) can be carried forward into later years.

- (6) For the purposes of subsection (5), there is an ***unmatched R&D excess*** for a financial year if:
- (a) the eligible body spends a particular amount (the ***R&D spend amount***) in the financial year on activities that qualify, under the funding contract, as research and development activities; and
 - (b) because of the operation of paragraph (2)(c) or paragraph (3)(a), the matching payments for the financial year are less than 50% of the R&D spend amount;

and the amount of the unmatched R&D excess is:

$$\text{R\&D spend amount in the financial year} - \left(2 \times \frac{\text{The amount of the matching payments for the financial year}}{2} \right)$$

Part 4—Miscellaneous provisions

9 Ministerial directions

- (1) The Minister may give a written direction to the industry services body if:
 - (a) the Minister:
 - (i) is satisfied that the direction is in Australia's national interest because of exceptional and urgent circumstances; and
 - (ii) is satisfied that the direction would not require the body to incur expenses greater than the sum of the amounts previously paid to the body under the funding contract that have not been spent or committed and the amounts the body will receive under the funding contract during the period to which the direction relates; and
 - (iii) has given the body's directors an adequate opportunity to discuss with the Minister the need for the proposed direction and the impact of compliance with subsection (3) on the body's commercial activities; and
 - (b) the direction is made for a purpose that is within the Commonwealth's legislative power.
- (2) If the body is given a direction under subsection (1), it must comply with it.
- (3) Subject to subsection (4), if the Minister gives a direction to the body under subsection (1):
 - (a) the Minister must cause a copy of the direction:
 - (i) to be published in the *Gazette* as soon as practicable after giving the direction; and
 - (ii) to be tabled in each House of the Parliament within 5 sitting days of that House after giving the direction; and
 - (b) the annual reports of the body applicable to periods in which the direction has effect must include:
 - (i) particulars of the direction; and

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- (ii) an assessment of the impact that the direction has had on the operations of the body during the period.
- (4) Subsection (3) does not apply in relation to a particular direction if:
 - (a) the Minister, on the recommendation of the body, determines, in writing, that compliance with the subsection would, or would be likely to, prejudice the commercial activities of the body; or
 - (b) the Minister determines, in writing, that compliance with the subsection would be contrary to the public interest.
- (5) The Minister is not to be taken to be a director of the body for the purposes of the *Corporations Act 2001* merely because of the power conferred on the Minister by this section.
- (6) The Commonwealth is not to be taken to be in a position to exercise control over the body merely because of the power conferred on the Minister by this section.

10 Delegations

- (1) The Minister may delegate all or any of the Minister's powers and functions under this Act or the regulations to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.The delegation must be in writing.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

11 Compensation for acquisition of property

- (1) If:
 - (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

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the Commonwealth is liable to pay the person a reasonable amount of compensation in respect of the acquisition.

- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

- (3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

12 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[Minister's second reading speech made in—
House of Representatives on 28 August 2002
Senate on 23 September 2002]

(174/02)
