



New South Wales

Poultry Meat Industry Amendment (Price Determination) Act 2002 No 65

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Poultry Meat Industry Act 1986 No 101	2
Schedule 1 Amendments	3



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Poultry Meat Industry Amendment (Price Determination) Act 2002 No 65

Act No 65, 2002

An Act to amend the *Poultry Meat Industry Act 1986* with respect to the price to be paid to growers for certain kinds of poultry, authorising certain things for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*, and for other purposes. [Assented to 10 July 2002]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Poultry Meat Industry Amendment (Price Determination) Act 2002*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Poultry Meat Industry Act 1986 No 101

The *Poultry Meat Industry Act 1986* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

base rate, in relation to a class of batch poultry, means the rate determined under section 10 in relation to batch poultry of that class.

batch poultry means designated poultry grown in batches of 1,000 or more.

efficiency incentive agreement means an agreement of the kind referred to in section 7 (1A) (a).

efficiency incentive rules means rules of the kind referred to in section 8 (4) (b).

efficiency incentive scheme means a scheme referred to in section 8 (4) (a).

excluded poultry, in relation to batch poultry the subject of an efficiency incentive scheme, means batch poultry that, pursuant to the efficiency incentive rules for the scheme, is taken to be excluded poultry for the purposes of the scheme.

standard agreement means an agreement of the kind referred to in section 7 (1A) (b).

[2] Section 3 (4)

Insert after section 3 (3):

(4) Notes included in this Act do not form part of this Act.

[3] Section 6 Functions of Committee

Omit section 6 (c), insert instead:

(c) to determine, in accordance with section 10, base rates for batch poultry,

[4] Section 7 Agreements between processors and growers to be in form approved by Committee

Omit “designated poultry grown in a batch of 1,000 or more unless the designated poultry” from section 7 (1).

Insert instead “batch poultry unless the batch poultry”.

[5] Section 7 (1A)

Insert after section 7 (1):

(1A) An agreement referred to in subsection (1) (a) may be:

- (a) an *efficiency incentive agreement*, in which payment for poultry is made to the grower in accordance with an efficiency incentive scheme, or
- (b) a *standard agreement*, in which payment for poultry is made to the grower otherwise than in accordance with an efficiency incentive scheme.

[6] Section 8 Approval of forms of agreement

Insert after section 8 (3):

- (4) The Committee must not approve a form of efficiency incentive agreement unless:
 - (a) the proposed agreement describes a scheme (an *efficiency incentive scheme*) to which growers who are parties to such an agreement will belong, and
 - (b) the proposed agreement contains or adopts rules for the scheme (*efficiency incentive rules*):
 - (i) that define the circumstances in which batch poultry is taken to be excluded poultry for the purposes of the scheme, and
 - (ii) that establish the maximum variations (upwards and downwards) from the relevant base rate that will be allowed in relation to payments for batch poultry (other than excluded poultry) delivered under such an agreement, and
 - (iii) that establish the factors according to which actual prices will be determined in relation to payments for batch poultry (including excluded poultry) delivered under such an agreement, and

- (iv) that deal with such other matters as are required by the regulations to be dealt with by the rules, and
- (c) the processor has had consultations with all growers who are negotiating with the processor, and a majority of those growers have agreed in writing to the submission of the form of the agreement for the Committee's approval.

[7] Section 9 Processor to notify details relating to agreements

Insert after section 9 (3):

- (3A) Without limiting subsection (3), a notification for the purposes of subsection (1) that relates to an efficiency incentive agreement must identify the efficiency incentive scheme to which the grower belongs by virtue of the agreement.

[8] Section 9A

Insert after section 9:

9A Authorisations

- (1) The following are specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:
 - (a) any agreements entered into between growers and processors for the purposes of this Act,
 - (b) the conduct of growers and processors in negotiating and entering into any such agreements,
 - (c) the conduct of growers and processors in performing any such agreements,
 - (d) the conduct of growers and processors in relation to the establishment, maintenance and administration of efficiency incentive schemes and their associated efficiency incentive rules,

- (e) the conduct of growers and processors in agreeing on, or negotiating, a base rate to be proposed by them for consideration of the Committee.

Note. Under section 10 (4) (a), the Committee must have regard to any suggested base rate in determining base rates.

- (2) Things authorised to be done by this section are authorised only to the extent to which they would otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.

[9] Part 4

Omit the Part, insert instead:

Part 4 Payments to growers

10 Committee to determine base rates

- (1) Subject to subsection (2), the Committee may from time to time determine base rates for batch poultry.
- (2) The Committee must determine base rates for batch poultry at least once every 6 months.
- (3) Different base rates may be determined for different classes of batch poultry.
- (4) In determining base rates, the Committee is to have regard to the following:
 - (a) any suggested base rate agreed to by processors and growers,
 - (b) growing costs,
 - (c) the species of poultry involved,
 - (d) the duration of any relevant rearing period,
 - (e) the annual throughput of poultry,
 - (f) poultry housing density,
 - (g) the needs of the industry,
 - (h) market forces affecting the industry,
 - (i) the public interest,

- (j) the reasonable minimum returns to growers while encouraging industry efficiency,
 - (k) such other matters as the Committee thinks relevant.
- (5) A determination made under this section must be submitted by the Committee to the Minister for approval.
- (6) A determination has no effect unless approved by the Minister.
- (7) A determination, if approved by the Minister:
- (a) must be published in the Gazette and in such other manner as the Minister considers appropriate, and
 - (b) takes effect:
 - (i) on the date on which the determination is published in the Gazette (the *publication date*), or
 - (ii) subject to subsection (8), on any other date or dates (whether before or after the publication date) as may be specified in the determination.
- (8) No determination may be made to take effect on a date or dates that is earlier than:
- (a) if the determination is made between 1 January and 30 June (inclusive) in a year—1 January of that year, or
 - (b) if the determination is made between 1 July and 31 December (inclusive) of a year—1 July of that year.
- (9) The Committee must keep in the office of its secretary a Register of all determinations approved by the Minister.
- (10) The Committee must make the Register available for inspection by processors and growers during business hours.

11 Prices payable to growers

- (1) The price for batch poultry received by a processor from a grower:
- (a) in the case of poultry delivered under an efficiency incentive agreement, is to be determined in accordance with the efficiency incentive rules for that agreement, or

- (b) in the case of poultry delivered under a standard agreement, is to be determined at a rate no less than the base rate for birds of the class to which the poultry belongs.
- (2) If not paid within 28 days after the relevant batch poultry is received by the processor, the price for the poultry may be recovered by the grower from the processor as a debt in any court of competent jurisdiction.

12 Variation of efficiency incentive rules

- (1) Efficiency incentive rules for an efficiency incentive scheme may be varied on the initiative of a processor or grower, but only if the processor and at least 75 per cent of the growers then belonging to the scheme give written support to the variation.
- (2) Within 14 days after varying the efficiency incentive rules for an efficiency incentive scheme, the processor must cause notice of that fact to be given to the Committee.
- (3) The notice must indicate:
 - (a) the terms of the variation, and
 - (b) when the variation is to take effect, and
 - (c) the identity of each grower who has given written support to the variation.

12A No contracting out

- (1) This Part has effect despite any stipulation to the contrary in any agreement, contract or arrangement.
- (2) No agreement, contract or arrangement, whether oral or wholly or partly in writing, and whether made or entered into before or after the commencement of this section, operates to annul, vary or exclude this Part.

[10] Section 14 Powers of inspectors

Omit “designated poultry grown in a batch of 1,000 or more” from section 14 (1) (a).

Insert instead “batch poultry”.

[11] Schedule 2 Provisions relating to the procedure of the Committee

Insert at the end of clause 6:

- (2) The Committee may, if it thinks fit, transact any of its business by the circulation of papers among all of its members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.
- (3) The Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (4) For the purposes of:
 - (a) the approval of a resolution under subclause (2), or
 - (b) a meeting held in accordance with subclause (3),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Committee.
- (5) A resolution approved under subclause (2) is, subject to the regulations, to be recorded in the minutes of the meetings of the Committee.
- (6) Papers may be circulated among the members for the purposes of subclause (2) by facsimile or other transmission of the information in the papers concerned.

[12] Schedule 3 Savings, transitional and other provisions

Insert before clause 1:

Part 1 General

[13] Schedule 3, clause 1A

Insert after clause 1:

1A Regulations

- (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

Poultry Meat Industry Amendment (Price Determination) Act 2002

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect:

- (a) as from the appointed day or a later day if the provision is consequent on the enactment of this Act, or
- (b) as from the date of assent to the Act concerned or a later date if the provision is consequent on the enactment of any other Act.

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

[14] Schedule 3, clause 9

Omit the clause, insert instead:

**Part 2 Savings and transitional provisions
consequent on enactment of Poultry Meat
Industry Amendment (Price Determination)
Act 2002**

9 Past determinations and orders

- (1) A determination or order made by the Committee before the commencement of this clause with respect to the prices to be paid for designated poultry has effect, and is taken to have had effect, at the time it was made or purported to be made and at all relevant times subsequently, despite the fact that it may not have been validly made.
- (2) No action, liability, claim or demand lies against any person (including the Minister or any member of the Committee) for anything done or omitted to be done in relation to the making of a determination or order purportedly made by the Committee under section 10 as in force immediately before the commencement of this clause.

10 Payments under past and interim agreements

- (1) A payment to a grower made before or after the commencement of this clause in accordance with an agreement that provides for payment by means of a scheme operating in the manner of an efficiency incentive scheme is validated.
- (2) No action, liability, claim or demand lies against a processor in relation to a price paid by the processor to a grower in accordance with any agreement (including an agreement referred to in subsection (1)) despite a failure to comply with section 11 as in force immediately before the commencement of this clause.

11 Continuation of existing agreements and formation of new agreements

- (1) Any agreement entered into before the commencement of this clause continues to have effect according to its terms.
- (2) Agreements in a form approved under section 8, as in force immediately before the commencement of this clause, may be entered into after that commencement.
- (3) Subclause (2) ceases to have effect on the proclaimed date.
- (4) An agreement of the kind referred to in subclause (2) that is entered into after the commencement of this clause ceases to have effect:
 - (a) on the date provided in that regard by the agreement, or
 - (b) on the proclaimed date,whichever is the earlier.
- (5) An agreement may not be entered into after the proclaimed date unless it has been approved under section 8, as amended by the *Poultry Meat Industry Amendment (Price Determination) Act 2002*.
- (6) In this clause, ***proclaimed date*** means a day appointed by proclamation for the purposes of this clause.

[Second reading speech made in—
Legislative Assembly on 29 May 2002
Legislative Council on 18 June 2002]