



New South Wales

Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The *Poultry Meat Industry Act 1986* currently regulates the relationship between poultry growers and poultry processors by means of a scheme under which poultry grown by a poultry grower for processing by a poultry processor (being poultry grown in batches of 1,000 or more):

- (a) must be grown under an agreement that is in a form approved by the Poultry Meat Industry Committee established under that Act, and
- (b) except in relation to poultry grown under an approved efficiency incentive scheme, must be paid for by the poultry processor at rates that are equal to or greater than the base rates determined by that Committee.

The object of this Bill is to amend the *Poultry Meat Industry Act 1986* so as:

- (a) to replace the scheme described above with a scheme:
 - (i) that establishes matters to be addressed by any poultry growing agreement entered into between a poultry grower and a poultry processor, and
 - (ii) that establishes standard provisions (from which the poultry grower and poultry processor may opt out) for inclusion in any such agreement, and

- (iii) that provides statutory authority for collective bargaining by poultry growers in their negotiations with poultry processors, and
- (b) to vary the constitution and functions of the Poultry Meat Industry Committee:
 - (i) by abolishing the positions currently held by poultry growers and poultry processors, and
 - (ii) by giving the Committee a role in developing the prescribed matters and standard provisions referred to in paragraph (a), and
- (c) to provide for the constitution and function of a Poultry Meat Industry Advisory Group, and
- (d) to enact minor, consequential and ancillary provisions, and provisions of a savings or transitional nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that, with a specified exception, the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Poultry Meat Industry Act 1986* set out in Schedule 1.

Schedule 1 Amendments

Amendments with respect to poultry growing agreements

Schedule 1 [9] omits Part 3 (Regulation of the poultry meat industry) and Part 4 (Payments to growers) and replaces them with proposed Part 3 (Poultry growing agreements). The new Part contains the following provisions:

Proposed section 7 requires a poultry growing agreement to address such matters as may be prescribed by the regulations, which it may do by including the appropriate standard provisions so prescribed or by including alternative provisions that are expressed to be included in compliance with the proposed section. Alternative provisions may, but need not, be to the same effect as the standard provisions. Failure to comply with the proposed section in relation to any matter will result in the appropriate standard provision being imputed into the agreement.

Proposed section 8 requires a poultry processor to notify the Director-General of the Department of Primary Industries within one month after entering into a poultry growing agreement with a poultry grower and to pay a notification fee. The notice will identify the poultry grower under the agreement, and each address at which poultry is to be grown under the agreement, and will indicate the date on which the agreement was entered into and the period for which the agreement is to remain in force. The notification fee will be determined in accordance with a scheme under which the revenue derived from notification fees is sufficient to cover the costs and expenses of the Poultry Meat Industry Committee and the Poultry Meat Industry

Advisory Group. Failure to comply with the requirements of the proposed section will attract a penalty of 10 penalty units (currently \$1,100).

Proposed section 9 is a provision that, for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*, specifically authorises collective bargaining by poultry growers in their negotiations with poultry processors.

Amendments with respect to the Poultry Meat Industry Committee

Schedule 1 [3] amends section 4 so as to reduce the membership of the Committee from 15 to 3, abolishing the 12 positions currently held by poultry growers and poultry processors.

Schedule 1 [7] substitutes section 6. The proposed section 6 gives the Committee the following functions:

- (a) to establish codes of practice and contract guidelines to assist in the negotiation and formation of poultry growing agreements,
- (b) to recommend matters that poultry growing agreements should be required to address and standard provisions with respect to those matters,
- (c) to conduct inquiries and report to the Minister on a variety of matters,
- (d) to facilitate the resolution of disputes between poultry growers and poultry processors,
- (e) to exercise other prescribed functions.

In relation to the functions referred to in paragraphs (a) and (b), the Committee will be required to seek advice from, and have regard to the views of, the Poultry Meat Industry Advisory Group to be established under proposed Part 2A.

Amendments with respect to the Poultry Meat Industry Advisory Group

Schedule 1 [8] inserts proposed Part 2A. The new Part contains the following provisions:

Proposed section 6A provides for the establishment of the Advisory Group, comprising 7 members (3 poultry growers, 3 poultry processors and one independent Chairperson).

Proposed section 6B provides that the Advisory Group is to have the function of furnishing advice to the Committee on the following matters:

- (a) codes of practice for use in the conduct of negotiations between poultry growers and poultry processors,
- (b) contract guidelines as to the matters that poultry growing agreements should be encouraged to address,
- (c) matters that poultry growing agreements should be required to address,
- (d) standard provisions for inclusion in poultry growing agreements in relation to the matters referred to in paragraph (c),

- (e) such other matters with respect to the poultry meat industry as the Advisory Group considers appropriate for advice.

Other amendments

Schedule 1 [11] omits section 18, a provision that enables the Poultry Meat Industry Committee to settle disputes between poultry growers and poultry processors. The Committee will continue to have a role in dispute resolution, but only by way of offering the services of its members as mediators and arbitrators.

Schedule 1 [12] substitutes section 19. The essential nature of the new section is the same as that of the old: that a certificate as to whether statutory notice of the making of a poultry growing agreement has been duly furnished is admissible in evidence as to the matters stated in the certificate in that regard.

Schedule 1 [13] amends section 23 so as to enable regulations to be made prescribing matters that poultry growing agreements must address, and standard provisions for inclusion in poultry growing agreements in relation to such matters.

Schedule 1 [16] amends clause 3 of Schedule 1 so as to allow a member of the Poultry Meat Industry Committee or Poultry Meat Industry Advisory Group to be appointed for a term not exceeding 2 years rather than, as at present, for a term of 2 years.

Schedule 1 [1], [2], [4], [14], [15], [17]–[19] and [21]–[26] amend sections 3 and 4, and Schedules 1 and 2, as a consequence of the other amendments made by the proposed Act.

Schedule 1 [5], [6], [10] and [20] amend sections 4, 5 and 13, and clauses 2 and 9 of Schedule 1, by way of minor law revision.

Schedule 1 [27] and [28] insert savings and transitional provisions consequent on the enactment of the proposed Act, and authorise the making of further savings and transitional provisions by regulation.



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Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill 2005

No. , 2005

A Bill for

An Act to amend the *Poultry Meat Industry Act 1986* in relation to the regulation of the poultry meat industry.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Act 2005</i> .	3 4
2 Commencement	5
(1) This Act commences on a day or days to be appointed by proclamation, subject to subsection (2).	6 7
(2) Schedule 1 [10] commences on the day appointed under section 4 of the <i>Farm Produce (Repeal) Act 1996</i> for the repeal of section 38 of the <i>Farm Produce Act 1983</i> .	8 9 10
3 Amendment of Poultry Meat Industry Act 1986 No 101	11
The <i>Poultry Meat Industry Act 1986</i> is amended as set out in Schedule 1.	12 13

Schedule 1 Amendments

	(Section 3)	1
[1] Section 3 Definitions		2
Omit the definitions of <i>agreement</i> , <i>base rate</i> , <i>Chairperson</i> , <i>efficiency incentive agreement</i> , <i>efficiency incentive rules</i> , <i>efficiency incentive scheme</i> , <i>excluded poultry</i> , <i>member</i> , <i>regulation</i> and <i>standard agreement</i> from section 3 (1).		3
Insert in alphabetical order:		4
<i>Advisory Group</i> means the Poultry Meat Industry Advisory Group established under section 6A.		5
<i>Department</i> means the Department of Primary Industries.		6
<i>Director-General</i> means Director-General of the Department.		7
<i>poultry growing agreement</i> means an agreement between a grower and a processor under which:		8
(a) the processor delivers designated poultry to the grower for growing, and		9
(b) the grower grows the poultry so delivered and returns it to the processor for processing.		10
<i>secretary of the Committee</i> means the person employed as secretary of the Committee as referred to in section 5 (2).		11
[2] Section 3 (3)		12
Omit the subsection.		13
[3] Section 4 Constitution of Committee		14
Omit section 4 (3). Insert instead:		15
(3) The Committee is to consist of 3 members appointed by the Minister, of whom:		16
(a) one is to be an independent person of the Minister's own choosing, and		17
(b) two are to be independent persons of whom at least one is, in the opinion of the Minister, skilled in arbitration, mediation or some other form of dispute resolution.		18
[4] Section 4 (7)		19
Omit "(a) and (d)".		20

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Schedule 1 Amendments

[5] Sections 4 (7) (a) and 5 (2) and Schedule 1, clause 2 (2)	1
Omit “of Agriculture” wherever occurring.	2
[6] Section 5 Staff of Committee	3
Omit “the <i>Public Service Act 1979</i> ” from section 5 (1).	4
Insert instead “Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> ”.	5
	6
[7] Section 6	7
Omit the section. Insert instead:	8
6 Functions of Committee	9
(1) The functions of the Committee are as follows:	10
(a) to establish:	11
(i) codes of practice for use in the conduct of negotiations between growers and processors, and	12
	13
(ii) contract guidelines as to the matters that poultry growing agreements might appropriately address,	14
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(b) to make recommendations to the Minister regarding:	16
(i) matters that poultry growing agreements should be required to address, and	17
	18
(ii) standard provisions for inclusion in poultry growing agreements in relation to those matters,	19
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(c) to inquire into, and make reports to the Minister on:	21
(i) such matters relating to the poultry meat industry as the Minister refers to the Committee for inquiry and report, and	22
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(ii) such other matters relating to the poultry meat industry as the Committee considers appropriate for inquiry and report,	25
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(d) to facilitate the resolution of disputes between processors and growers,	28
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(e) to exercise such other functions with respect to the poultry meat industry as are prescribed by the regulations.	30
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(2) For the purpose of exercising its functions under subsection (1) (a) and (b), the Committee must seek advice from, and have regard to the views of, the Advisory Group.	32
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(3) Copies of any codes of practice and contract guidelines established under this section:	35
	36

(a)	must be kept available at the office of the Department for inspection by the public, free of charge, during ordinary business hours, and	1 2 3
(b)	must be posted on the Department's internet site.	4
[8] Part 2A		5
	Insert after Part 2:	6
	Part 2A Poultry Meat Industry Advisory Group	7
	6A Establishment of Advisory Group	8
(1)	A body is to be established under the name of the "Poultry Meat Industry Advisory Group".	9 10
(2)	The Advisory Group is not, and does not represent, the Crown.	11
(3)	The Advisory Group is to consist of 7 members appointed by the Minister, of whom:	12 13
(a)	1 is to be an independent person of the Minister's own choosing, and	14 15
(b)	3 are to represent processors and are to be nominated in accordance with the regulations, and	16 17
(c)	3 are to represent growers and are to be elected in accordance with the regulations.	18 19
(4)	The member referred to in subsection (3) (a) is to be the Chairperson of the Advisory Group.	20 21
(5)	Schedule 1 has effect with respect to the members of the Advisory Group.	22 23
(6)	Schedule 2 has effect with respect to the procedure of the Advisory Group.	24 25
(7)	In subsection (3) (a), <i>independent</i> means the following:	26
(a)	not an officer of the Department,	27
(b)	not a representative of processors or growers.	28
	6B Function of Advisory Group	29
	The function of the Advisory Group is to furnish advice to the Committee regarding the following:	30 31
(a)	codes of practice for use in the conduct of negotiations between growers and processors,	32 33

(b)	contract guidelines as to the matters that poultry growing agreements should be encouraged to address,	1 2
(c)	matters that poultry growing agreements should be required to address,	3 4
(d)	standard provisions for inclusion in poultry growing agreements in relation to the matters referred to in paragraph (c),	5 6 7
(e)	such other matters with respect to the poultry meat industry as the Advisory Group considers appropriate for advice.	8 9 10
[9] Part 3		11
	Omit Parts 3 and 4. Insert instead:	12
	Part 3 Poultry growing agreements	13
	7 Poultry growing agreements to address prescribed matters	14
(1)	A poultry growing agreement must address such matters as may be prescribed by the regulations.	15 16
(2)	Compliance with this section in relation to any such matter may be achieved:	17 18
(a)	by including in the agreement (whether by reference or otherwise) the standard provision prescribed by the regulations in relation to that matter, or	19 20 21
(b)	by including in the agreement some other provision (whether to the same effect as the standard provision or to some other effect), being a provision that is expressed to be included in the agreement in compliance with this section in relation to that matter.	22 23 24 25 26
(3)	A poultry growing agreement that does not comply with this section in relation to any such matter is taken, for all purposes, to include the standard provision prescribed by the regulations in relation to that matter.	27 28 29 30
(4)	A standard provision that is included, or taken to be included, in a poultry growing agreement prevails over any other provision of the agreement (other than another standard provision) to the extent of any inconsistency between them.	31 32 33 34
	8 Processor to notify Director-General of certain matters	35
(1)	Within one month after a processor and a grower enter into a poultry growing agreement, the processor:	36 37

(a)	must send notice of that fact to the Director-General, and	1
(b)	must pay a notification fee to the Director-General.	2
	Maximum penalty: 10 penalty units.	3
(2)	The notice referred to in subsection (1) (a):	4
(a)	must be in the form approved by the Director-General, and	5
(b)	must identify the grower by whom, and each address at which, designated poultry is to be grown under the agreement, and	6 7 8
(c)	must indicate the date on which the agreement was entered into and the period for which it is to remain in force.	9 10
(3)	The notification fee referred to in subsection (1) (b) is to be of an amount determined in accordance with a scheme established by the Director-General.	11 12 13
(4)	The object of such a scheme should be to ensure that the amounts received from notification fees during any period are equivalent to the costs and expenses of the Committee and Advisory Group during that period.	14 15 16 17
9	Authorisations	18
(1)	The following are specifically authorised by this Act for the purposes of the <i>Trade Practices Act 1974</i> of the Commonwealth and the <i>Competition Code of New South Wales</i> :	19 20 21
(a)	any agreements entered into between 2 or more growers, or between 2 or more growers and a processor, in relation to the growing of designated poultry,	22 23 24
(b)	the conduct of those growers and that processor in negotiating and entering into any such agreement,	25 26
(c)	the conduct of those growers and that processor in performing any such agreement.	27 28
(2)	Anything authorised to be done by this section is authorised only to the extent to which it would otherwise contravene Part IV of the <i>Trade Practices Act 1974</i> of the Commonwealth or the <i>Competition Code of New South Wales</i> .	29 30 31 32
(3)	In this section, agreement includes a contract, arrangement or understanding.	33 34
[10]	Section 13 Inspectors	35
	Omit paragraph (a) from the definition of inspector .	36

[11] Section 18 Disputes	1
Omit the section.	2
[12] Section 19	3
Omit the section. Insert instead:	4
19 Certificate as to notification relating to poultry growing agreement	5
A certificate signed by the Director-General, or by such other person as may be prescribed by the regulations, and stating that, on a specified date or during a specified period, the Director-General had or had not been notified under section 8 that a specified processor and specified grower had entered into a poultry growing agreement is admissible in any legal proceedings and is evidence of that fact.	6 7 8 9 10 11 12
[13] Section 23 Regulations	13
Insert after section 23 (1):	14
(1A) In particular, a regulation:	15
(a) may prescribe matters that poultry growing agreements must address, and	16 17
(b) may prescribe standard provisions for inclusion in poultry growing agreements in relation to those matters.	18 19
[14] Schedule 1, heading	20
Omit the heading and source reference. Insert instead:	21
Schedule 1 Provisions relating to the members of the Committee and the Advisory Group	22 23 24
(Sections 4 (5) and 6A (5))	25
[15] Schedule 1, clause 1	26
Insert before clause 2:	27
1 Definitions	28
In this Schedule:	29
<i>Chairperson</i> means Chairperson of the Committee or Chairperson of the Advisory Group, as the context requires.	30 31
<i>member</i> means member of the Committee or member of the Advisory Group, as the context requires.	32 33

[16] Schedule 1, clause 3	1
Omit “term of”. Insert “term not exceeding”.	2
[17] Schedule 1, clauses 5 and 6 (2)	3
Omit “section 4” wherever occurring. Insert instead “section 6A”.	4
[18] Schedule 1, clause 6 (1)	5
Omit “the Committee is constituted as provided by section 4 (3)”.	6
Insert instead “the Committee or Advisory Group is duly constituted”.	7
[19] Schedule 1, clauses 7, 8 and 10	8
Insert “or Advisory Group” after “Committee” wherever occurring.	9
[20] Schedule 1, clause 9 (1)	10
Omit “The <i>Public Service Act 1979</i> ”.	11
Insert instead “Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> ”.	12
	13
[21] Schedule 2, heading	14
Omit the heading and source reference. Insert instead:	15
Schedule 2 Provisions relating to the procedure of the Committee and the Advisory Group	16
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	(Sections 4 (6) and 6A (6))
	19
[22] Schedule 2, clause 1A	20
Insert before clause 1:	21
1A Definitions	22
In this Schedule:	23
<i>Chairperson</i> means Chairperson of the Committee or Chairperson of the Advisory Group, as the context requires.	24
	25
<i>member</i> means member of the Committee or member of the Advisory Group, as the context requires.	26
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[23] Schedule 2, clauses 1 and 3–6	28
Insert “or Advisory Group” after “Committee” wherever occurring.	29

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Schedule 1 Amendments

[24] Schedule 2, clause 2	1
Omit “8”. Insert instead “2”.	2
[25] Schedule 2, clause 2 (2)	3
Insert at the end of clause 2:	4
(2) The quorum for a meeting of the Advisory Group is 4 members.	5
[26] Schedule 2, clause 6 (1)	6
Omit “or by 5 or more members”.	7
Insert instead “or by a quorum of its members”.	8
[27] Schedule 3 Savings, transitional and other provisions	9
Insert at the end of clause 1A (1):	10
<i>Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Act 2005</i>	11
	12
[28] Schedule 3, Part 3	13
Insert after Part 2:	14
Part 3 Provisions consequent on enactment of Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Act 2005	15
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12 Definitions	19
In this Part:	20
<i>the amended Act</i> means this Act, as amended by the amending Act.	21
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<i>the amending Act</i> means the <i>Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Act 2005</i> .	23
	24
<i>the unamended Act</i> means this Act, as in force immediately before the commencement of the amending Act.	25
	26
13 Committee members	27
(1) The person who, immediately before the commencement of Schedule 1 [3] to the amending Act, was the member of the Committee referred to in section 4 (3) (a) of the unamended Act is taken to have been appointed as the member referred to in section 4 (3) (a) of the amended Act.	28
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|-----------|---|----------------------------|
| (2) | A person who, immediately before the commencement of Schedule 1 [3] to the amending Act, was a member of the Committee referred to in section 4 (3) (d) of the unamended Act is taken to have been appointed as a member referred to in section 4 (3) (b) of the amended Act. | 1
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| (3) | Subject to clause 7 of Schedule 1 to the amended Act, each member referred to in subclause (1) or (2) holds office for the residue of the term for which he or she was appointed as a member under the unamended Act. | 6
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| 14 | Continuation of existing poultry growing agreements | 10 |
| (1) | Subject to subclause (2), the substitution by Schedule 1 [9] to the amending Act of Part 3 of the unamended Act does not affect any existing poultry growing agreement. | 11
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| (2) | The price for batch poultry received by a processor from a grower under an existing poultry growing agreement is to be calculated: | 14
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| (a) | at the rate that would be applicable to the poultry under Part 3 of the unamended Act were that Part still in force, or | 16
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| (b) | at such other rate as the processor and grower may from time to time agree. | 18
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| (3) | Subclause (2) (a) ceases to have effect at the end of 31 December 2005. | 20
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| (4) | Section 9 of the amended Act applies to any agreement and conduct with respect to an agreement referred to in subclause (2) (b) in the same way as it applies to any agreement and conduct with respect to a poultry growing agreement entered into in accordance with the amended Act. | 22
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| (5) | In this clause, <i>existing poultry growing agreement</i> means an agreement entered into, in accordance with Part 3 of the unamended Act, before the substitution of that Part by Schedule 1 [9] to the amending Act. | 27
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Schedule 1 Amendments

15 Continued application of section 9A of unamended Act

Section 9A of the unamended Act continues to apply to any
agreement and conduct to which it applied immediately before
the repeal of that section as if that section had not been repealed.

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