

[Act 2002 No 65]



New South Wales

Poultry Meat Industry Amendment (Price Determination) Bill 2002

Explanatory note

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

Overview of Bill

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

- (a) to provide a system for making determinations that set out prices to be paid to growers for certain kinds of poultry, and
- (b) to authorise certain things for the purposes of the *Trade Practices Act 1974* of the Commonwealth (*Trade Practices Act*) and the *Competition Code of New South Wales* (*Competition Code*), and
- (c) to make other minor or consequential amendments.

* Amended in committee—see table at end of volume.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Poultry Meat Industry Act 1986* (the *principal Act*) set out in Schedule 1.

Schedule 1 Amendments

Pricing

Schedule 1 [1] amends section 3 to insert definitions that are used in the following proposed provisions.

Schedule 1 [3] amends section 6 to enable the Poultry Meat Industry Committee (the *Committee*) to determine, with the approval of the Minister, base rates for designated poultry (within the meaning of the principal Act) grown in batches of 1,000 or more (*batch poultry*).

Schedule 1 [5] inserts proposed section 7 (1A) to clarify that agreements under the principal Act may provide for payment for batch poultry through a pool fund (*pool fund payment agreement*) or by direct payment.

Schedule 1 [6] amends section 8 to limit the power of the Committee in relation to approving forms of agreement. A form of pool fund payment agreement must not be approved unless the agreement identifies the pool fund or funds from which payment to a grower is to be made and unless a copy of the rules of the pool fund has been lodged with the Committee.

Schedule 1 [8] substitutes Part 4 of the principal Act to provide a system of payments to growers for batch poultry.

Proposed section 10 enables the Committee to determine from time to time, subject to the Minister's approval, the base rates to be used in working out the amounts to be paid by processors to growers for batch poultry. Different rates may be determined for different classes of batch poultry depending on factors such as methods of payments, kinds of designated poultry, growing conditions and regions. All determinations approved by the Minister must be published in the Gazette and made available for inspection by processors and growers during business hours.

Proposed section 11 allows processors to establish, maintain and administer pool funds for the purpose of paying growers. It also sets out what must be stated in the rules that are to govern the pool fund and how variations to those rules may be made.

Proposed section 12 specifies the amount that must be paid into the pool fund by the processor in relation to batch poultry delivered to it by a grower under a pool fund payment agreement.

Proposed section 12A deals with what must be paid to a grower for batch poultry delivered to a processor under a pool fund payment agreement.

Proposed section 12B refers to payment for batch poultry which would have been normally paid out of a pool fund but is excluded from its operation by agreement of the grower and processor.

Proposed section 12C specifies the amount that must be paid to a grower for batch poultry delivered by the grower to a processor under an agreement that provides for payment otherwise than by means of a pool fund.

Proposed section 12D prevents processors and growers from contracting out of the provisions of Part 4 of the principal Act.

Proposed section 12E allows inspection of the records of a pool fund by a pool member and enables regulations to be made in relation to the audit of the fund's accounts.

Trade Practices Act

Part IV of the Trade Practices Act deals with restrictive trade practices by trading or financial corporations. The Part contains provisions that proscribe or regulate agreements and conduct that are aimed at procuring and maintaining competition in trade and commerce. Among other things, the Part provides that agreements that have, or are likely to have, the effect of substantially lessening competition are unenforceable. The Competition Code extends the application of Part IV of the Trade Practices Act in New South Wales to persons other than corporations.

In determining whether there has been a contravention of the restrictive trade practice provisions of the Trade Practices Act or Competition Code, certain acts are to be disregarded. For example, a thing done in New South Wales is to be disregarded if the thing is specified in, and specifically authorised by, an Act passed by the Parliament or regulations made under such an Act. **Schedule 1 [7]** inserts **proposed section 9A** to specifically authorise the following:

- (a) any agreements entered into between growers and processors for the purposes of the principal 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 pool funds and 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.

Miscellaneous

Schedule 1 [2] provides that notes included in the principal Act do not form part of it.

Schedule 1 [10] enables the Committee to transact its business at meetings by telephone, close-circuit television or other means.

Schedule 1 [12] enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act. **Schedule 1 [11]** makes a consequential amendment.

Schedule 1 [13] enacts savings and transitional provisions relating to existing funds operating in the nature of pool funds. It also validates certain determinations, orders and payments made under the principal Act before the commencement of the relevant provision.

Schedule 1 [4] and [9] are consequential amendments arising from the proposed definition of batch poultry.