

Passed by both Houses



New South Wales

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

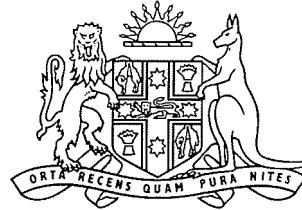
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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2005

Clerk of the Parliaments



New South Wales

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

Act No , 2005

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 Name of Act

This Act is the *Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Act 2005*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, subject to subsection (2).
- (2) Schedule 1 [10] commences on the day appointed under section 4 of the *Farm Produce (Repeal) Act 1996* for the repeal of section 38 of the *Farm Produce Act 1983*.

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

Omit the definitions of *agreement*, *base rate*, *Chairperson*, *efficiency incentive agreement*, *efficiency incentive rules*, *efficiency incentive scheme*, *excluded poultry*, *member*, *regulation* and *standard agreement* from section 3 (1).

Insert in alphabetical order:

Advisory Group means the Poultry Meat Industry Advisory Group established under section 6A.

Department means the Department of Primary Industries.

Director-General means Director-General of the Department.

poultry growing agreement means an agreement between a grower and a processor under which:

- (a) the processor delivers designated poultry to the grower for growing, and
- (b) the grower grows the poultry so delivered and returns it to the processor for processing.

secretary of the Committee means the person employed as secretary of the Committee as referred to in section 5 (2).

[2] Section 3 (3)

Omit the subsection.

[3] Section 4 Constitution of Committee

Omit section 4 (3). Insert instead:

- (3) The Committee is to consist of 3 members appointed by the Minister, of whom:
 - (a) one is to be an independent person of the Minister's own choosing, and
 - (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.

[4] Section 4 (7)

Omit "(a) and (d)".

[5] Sections 4 (7) (a) and 5 (2) and Schedule 1, clause 2 (2)

Omit “of Agriculture” wherever occurring.

[6] Section 5 Staff of Committee

Omit “the *Public Service Act 1979*” from section 5 (1).

Insert instead “Chapter 2 of the *Public Sector Employment and Management Act 2002*”.

[7] Section 6

Omit the section. Insert instead:

6 Functions of Committee

- (1) The functions of the Committee are as follows:
 - (a) to establish:
 - (i) codes of practice for use in the conduct of negotiations between growers and processors, and
 - (ii) contract guidelines as to the matters that poultry growing agreements might appropriately address,
 - (b) to make recommendations to the Minister regarding:
 - (i) matters that poultry growing agreements should be required to address, and
 - (ii) standard provisions for inclusion in poultry growing agreements in relation to those matters,
 - (c) to inquire into, and make reports to the Minister on:
 - (i) such matters relating to the poultry meat industry as the Minister refers to the Committee for inquiry and report, and
 - (ii) such other matters relating to the poultry meat industry as the Committee considers appropriate for inquiry and report,
 - (d) to facilitate the resolution of disputes between processors and growers,
 - (e) to exercise such other functions with respect to the poultry meat industry as are prescribed by the regulations.
- (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.
- (3) Copies of any codes of practice and contract guidelines established under this section:

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- (a) must be kept available at the office of the Department for inspection by the public, free of charge, during ordinary business hours, and
 - (b) must be posted on the Department's internet site.

[8] Part 2A

Insert after Part 2:

Part 2A Poultry Meat Industry Advisory Group

6A Establishment of Advisory Group

- (1) A body is to be established under the name of the "Poultry Meat Industry Advisory Group".
- (2) The Advisory Group is not, and does not represent, the Crown.
- (3) The Advisory Group is to consist of 7 members appointed by the Minister, of whom:
 - (a) 1 is to be an independent person of the Minister's own choosing, and
 - (b) 3 are to represent processors and are to be nominated in accordance with the regulations, and
 - (c) 3 are to represent growers and are to be elected in accordance with the regulations.
- (4) The member referred to in subsection (3) (a) is to be the Chairperson of the Advisory Group.
- (5) Schedule 1 has effect with respect to the members of the Advisory Group.
- (6) Schedule 2 has effect with respect to the procedure of the Advisory Group.
- (7) In subsection (3) (a), *independent* means the following:
 - (a) not an officer of the Department,
 - (b) not a representative of processors or growers.

6B Function of Advisory Group

The function of the Advisory Group is to furnish advice to the Committee regarding the following:

- (a) codes of practice for use in the conduct of negotiations between growers and 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.

[9] Part 3

Omit Parts 3 and 4. Insert instead:

Part 3 Poultry growing agreements

7 Poultry growing agreements to address prescribed matters

- (1) A poultry growing agreement must address such matters as may be prescribed by the regulations.
- (2) Compliance with this section in relation to any such matter may be achieved:
 - (a) by including in the agreement (whether by reference or otherwise) the standard provision prescribed by the regulations in relation to that matter, or
 - (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.
- (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.
- (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.

8 Processor to notify Director-General of certain matters

- (1) Within one month after a processor and a grower enter into a poultry growing agreement, the processor:

- (a) must send notice of that fact to the Director-General, and
 - (b) must pay a notification fee to the Director-General.
- Maximum penalty: 10 penalty units.
- (2) The notice referred to in subsection (1) (a):
 - (a) must be in the form approved by the Director-General, and
 - (b) must identify the grower by whom, and each address at which, designated poultry is to be grown under the agreement, and
 - (c) must indicate the date on which the agreement was entered into and the period for which it is to remain in force.
 - (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.
 - (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.

9 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 2 or more growers, or between 2 or more growers and a processor, in relation to the growing of designated poultry,
 - (b) the conduct of those growers and that processor in negotiating and entering into any such agreement,
 - (c) the conduct of those growers and that processor in performing any such agreement.
- (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 *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.
- (3) In this section, **agreement** includes a contract, arrangement or understanding.

[10] Section 13 Inspectors

Omit paragraph (a) from the definition of **inspector**.

[11] Section 18 Disputes

Omit the section.

[12] Section 19

Omit the section. Insert instead:

19 Certificate as to notification relating to poultry growing agreement

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.

[13] Section 23 Regulations

Insert after section 23 (1):

(1A) In particular, a regulation:

- (a) may prescribe matters that poultry growing agreements must address, and
- (b) may prescribe standard provisions for inclusion in poultry growing agreements in relation to those matters.

[14] Section 26

Insert after section 25:

26 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as practicable after the period of 3 years from the date of commencement of the *Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Act 2005*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

[15] Schedule 1, heading

Omit the heading and source reference. Insert instead:

**Schedule 1 Provisions relating to the members
of the Committee and the Advisory
Group**

(Sections 4 (5) and 6A (5))

[16] Schedule 1, clause 1

Insert before clause 2:

1 Definitions

In this Schedule:

Chairperson means Chairperson of the Committee or
Chairperson of the Advisory Group, as the context requires.

member means member of the Committee or member of the
Advisory Group, as the context requires.

[17] Schedule 1, clause 3

Omit “term of”. Insert “term not exceeding”.

[18] Schedule 1, clauses 5 and 6 (2)

Omit “section 4” wherever occurring. Insert instead “section 6A”.

[19] Schedule 1, clause 6 (1)

Omit “the Committee is constituted as provided by section 4 (3)”.

Insert instead “the Committee or Advisory Group is duly constituted”.

[20] Schedule 1, clauses 7, 8 and 10

Insert “or Advisory Group” after “Committee” wherever occurring.

[21] Schedule 1, clause 9 (1)

Omit “The *Public Service Act 1979*”.

Insert instead “Chapter 2 of the *Public Sector Employment and Management
Act 2002*”.

[22] Schedule 2, heading

Omit the heading and source reference. Insert instead:

Schedule 2 Provisions relating to the procedure of the Committee and the Advisory Group

(Sections 4 (6) and 6A (6))

[23] Schedule 2, clause 1A

Insert before clause 1:

1A Definitions

In this Schedule:

Chairperson means Chairperson of the Committee or Chairperson of the Advisory Group, as the context requires.

member means member of the Committee or member of the Advisory Group, as the context requires.

[24] Schedule 2, clauses 1 and 3–6

Insert “or Advisory Group” after “Committee” wherever occurring.

[25] Schedule 2, clause 2

Omit “8”. Insert instead “2”.

[26] Schedule 2, clause 2 (2)

Insert at the end of clause 2:

(2) The quorum for a meeting of the Advisory Group is 4 members.

[27] Schedule 2, clause 6 (1)

Omit “or by 5 or more members”.

Insert instead “or by a quorum of its members”.

[28] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1A (1):

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

[29] Schedule 3, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Act 2005

12 Definitions

In this Part:

the amended Act means this Act, as amended by the amending Act.

the amending Act means the *Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Act 2005*.

the unamended Act means this Act, as in force immediately before the commencement of the amending Act.

13 Committee members

- (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.
- (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.
- (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.

14 Continuation of existing poultry growing agreements

- (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.
- (2) The price for batch poultry received by a processor from a grower under an existing poultry growing agreement is to be calculated:

- (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
 - (b) at such other rate as the processor and grower may from time to time agree.
- (3) Subclause (2) (a) ceases to have effect at the end of 31 December 2005.
 - (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.
 - (5) In this clause, *existing poultry growing agreement* 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.

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.