



# Legislative Council

## Poultry Meat Industry Amendment (Price Determination) Bill Hansard - Extract

18/06/2002

### Second Reading

**The Hon. MICHAEL COSTA** (Minister for Police) [6.05 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

The *Poultry Meat Industry Act 1986* regulates the legal relationship between growers and processors of poultry meat.

The Act establishes the *Poultry Meat Industry Committee*.

The Act applies to chicken which are not more than 18 weeks old or another bird of a declared species, being a chicken or bird which is being or has been grown specifically for consumption as poultry meat.

It is an offence under the Act for a processor to process poultry grown in a batch of 1000 or more unless the poultry is grown under a written agreement between the processor and the grower.

The agreement must be in a form approved by the Poultry Meat Industry Committee.

This provision prevents a grower from growing poultry "on spec" with the object of selling the poultry for the highest price obtainable when the poultry are ready for slaughter.

A processor is also required to give notice to the Poultry Meat Industry Committee when an agreement is entered into between a processor and a grower, and when such an agreement terminates.

The Poultry Meat Industry Committee has a number of other functions.

These include the setting of guidelines for the drawing up of agreements between processors and growers; the approval of forms of agreement if they are in accordance with the guidelines; and, most importantly for present purposes, to determine prices to be paid to growers for the raising of poultry.

A comprehensive review of the *Poultry Meat Industry Act 1986* was conducted in 1998/99.

The review was undertaken to fulfil the NSW Government's commitment under the Competition Principles Agreement.

The Review Group was chaired by a representative of NSW Agriculture and comprised representatives of the poultry meat industry and Government.

The Review Group prepared and distributed an Issues Paper in April 1998, and followed this with a program of public consultation with public forums held in Seven Hills, Maitland and Tamworth. Over 180 submissions were received, including 32 confidential submissions from poultry meat growers.

The Review Group submitted a final report in November 1999.

The Review Group recommended the retention of the *Poultry Meat Industry Act* and the facilitation of negotiations between growers and processors in determining prices and contract conditions.

However the Review Group recommended significant changes to the Act and to the role of the Committee.

The Government considered that these changes, if made, would result in instability in the industry which would not be in the interests of either the industry or the consuming public.

The Government therefore decided not to support the recommendations of the Review Group for fundamental changes to the way in which the Act regulates the relationship between growers and processors.

The Government does, however, support some changes to the Act.

These changes are mainly to simplify procedures of the Committee in determining prices, but also to streamline some of the Committee's administrative processes.

I will deal shortly with these changes.

The Act requires the Committee to determine the prices to be paid by processors to growers for poultry which is covered by the Act.

In practice the Committee has had a practice of determining a system by which the prices to be paid may be determined.

The Committee has regularly made price orders as provided by Section 10 of the Act but in practice the prices which the price order sets are not the prices paid to individual growers.

The current practice by which the actual prices to be paid to growers are determined is complicated.

In summary, the practice is as follows.

- The Committee applies a "model farm" concept to determine an indicative growing fee which is equivalent to the average total cost of production.
- The parameters of this model are reviewed every three years.
- In addition, the model is updated in arrears every six months according to changes in the Consumer Price Index and other costs which directly influence growing costs.
- A model or standard fee is determined by the Committee for the six-monthly period dating from the last price adjustment day. It is this price which is approved by the Minister and is gazetted under Section 10 of the Act.
- Each processor negotiates with its growers a number of adjustments to the model fee so as to reflect market conditions and throughput. The price paid to growers is a result of altering the model fee by these negotiated adjustments. The adjustments are ratified by the Committee or, if in dispute, can be taken to the Committee for resolution.
- Administratively determined adjustments for market conditions and throughput are agreed between each processor and its growers and automatically approved by the Committee if within a certain percentage of the cost model. If beyond this percentage then the processor must demonstrate that there had been no abuse of market power in arriving at the adjustment level.
- Grower returns may be further influenced by a pooling system used to rank individual growers according to efficiency criteria, such as feed conversion ratio and mortality. An associated efficiency rating system, whereby individual growers are assigned an efficiency score per batch, also influences payments.

This practice of the Poultry Meat Industry Committee in determining prices, which generally are not the prices actually paid to a particular grower, is well established, having been in operation for many years.

However, it is clear from the terms of Section 10(1) that the practice is not in accordance with the Act. What the Committee does, in effect, is determine a manner of determining a price.

Section 10(1) requires that the price is to be determined by the order.

There is no provision in the Act for a price to be determined in a manner specified in the order, for example, or for a price determined by the order, which is done with the Minister's approval, to be varied by the Committee.

The Bill proposes to amend the Act so as to regularise the current price fixing practices of the industry, while still maintaining the overall control of the process.

It does this by allowing the Committee to determine, by order, the base rates to be paid by processors for poultry of different classes. The Committee's price determination order will require the approval of the Minister before it is of any effect.

Since the Committee's price determination order will have effect according to its terms, including the date or dates from which it is to operate, references to a Price Adjustment Day which are presently in the Act will be removed. There will be no requirement for a new order to be made every six months, or at any other fixed time.

The Bill also validates the present practice of the industry of establishing payment pools for the payment of growers.

The base price determined by the Committee, with the Minister's approval, will be the price to be paid by the processor into the payment pool which is operated for the benefit of growers who have agreed to be part of the payment pool.

The rules for the conduct of the payment pools will determine how the proceeds of the payment pool will be distributed among growers. These rules will be required to be lodged by the processor with the Committee and any variation to the pool rules, once established, will need to be approved by seventy five percent of the growers who are in the pool.

Appropriate statutory protections, which have been absent in the past, for payment pools are also included

in the Bill. These include the requirement for the pool funds to be held in trust for the benefit of the grower members and provisions relating to audit, payment times, and interest for late payment.

Because the past practices of the industry, although long established and widely accepted by all, have not been in accordance with the Act, the Bill also contains provisions intended to validate past actions of the Committee in making price determinations and of processors in not paying for poultry strictly in accordance with the Act.

It is, however, not all payments made by processors which were not in accordance with the Act which will be validated and in respect of which they will receive protection.

Since actual payments to growers by processors were governed by written agreements which were subject to oversight by the Committee, the Bill proposes that processors will be protected in regard to any payments made to growers which were in accordance with an agreement with a grower.

Where a payment has been made in accordance with an agreement the payment will be validated and no action to recover any difference in price between the agreed price and what, it might be argued, the Act required to be paid, will be possible.

As a matter of administrative convenience, the Bill also includes provisions allowing the Committee to conduct its business other than by face to face meetings.

The provisions that are included in the Bill in this regard are the same as those that now commonly apply to statutory bodies. The absence of these modern provisions has hampered the efficient operation of the Committee in the past and the Government is pleased to be able to meet the Committee's request for the law to be changed in order to permit it to streamline its procedures.

The other important change made by the Bill is to amend the Act to ensure that actions of processors and growers in negotiating a consensus on prices, and in entering into contracts in accordance with the requirements of the Act, will be specifically exempted from Part four of the *Trade Practices Act 1974* of the Commonwealth.

This has been made necessary by the action of the poultry processors in making an application to the Australian Competition and Consumer Commission for authorisation under Section 88(1) of the *Trade Practices Act 1974*.

This would have the effect of allowing the processors to negotiate collectively with their growers in relation to prices and the terms of contracts.

The application purports to be made on behalf of growers, but was made without the consent or support of the growers.

Part four of the *Trade Practices Act 1974* deals with restrictive trade practices.

The general purpose and scope of the Part can be described by saying that it contains provisions which proscribe and regulate agreements and conduct which are aimed at procuring and maintaining competition in trade and commerce. Broadly speaking, those provisions either control or proscribe the making of certain contracts or arrangements or the reaching of certain understandings.

Section 51 of the *Trade Practices Act 1974* provides an exception to the operation of Part four for anything "specified in, and specifically authorised by" an Act of a State.

The Crown Solicitor has advised, and it seems to be generally agreed, that the Poultry Meat Industry Committee, and a member while acting as a member, is not subject to the *Trade Practices Act 1974*.

The processors in their application to the Australian Competition and Consumer Commission state that "The processors have obtained a legal opinion ... which states that in complying with the requirements of the existing New South Wales Act ... individual processors and growers are at risk of contravening the Trade Practices Act".

The basis of this possible breach of the Act is not clear, but it appears from the application that it relates to the "... manner in which the standard fee is set and contract conditions determined".

It is by no means clear that conduct of the growers, or processors, in complying with the procedures of the Poultry Meat Industry Act are in breach of, or require authorisation under, the Trade Practices Act.

Nevertheless, it is necessary for the Government to take some action in this regard since it has been suggested by the processors that if the authorisation applied for from the Australian Competition and Consumer Commission is granted it will no longer be necessary for the industry to comply with the Poultry Meat Industry Act.

In other words, it is suggested that there would be a conflict between the Commonwealth Act and the State Act and therefore, in accordance with the Australian Constitution, the Commonwealth Act will take precedence over the State Act.

The Government believes this argument is fundamentally flawed and that any authorisation granted by the Commission will not absolve the processors from the necessity to comply with the Poultry Meat Industry

Act.

Nevertheless, since it is clear that the aim of the processors is to undermine the operation of the Act if they can, the Government believes that the basis for any possible argument about an inconsistency between the two Acts should be removed.

Accordingly, and in order to ensure that the legislative scheme for the regulation of the industry cannot be frustrated by the processors, the Bill inserts into the Act a new section, Section 9A, which specifically authorises conduct of growers and processors which is necessary for the purposes of the Act but which might be seen as being contrary to the *Trade Practices Act 1974*.

This will render any authorisation by the Australian Competition and Consumer Commission unnecessary and ensure that the orderly conduct of the poultry meat industry is preserved.

I commend the Bill to the House.