



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.

## 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.

First print



New South Wales

# **Poultry Meat Industry Amendment (Price Determination) Bill 2002**

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New South Wales

# **Poultry Meat Industry Amendment (Price Determination) Bill 2002**

No. , 2002

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## **A Bill for**

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.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Poultry Meat Industry Amendment (Price Determination) Act 2002</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Poultry Meat Industry Act 1986 No 101</b>	8
The <i>Poultry Meat Industry Act 1986</i> is amended as set out in Schedule 1.	9 10

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## Schedule 1 Amendments

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(Section 3)

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### [1] Section 3 Definitions

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Insert in alphabetical order in section 3 (1):

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*base rate* means the rate determined by the Committee under section 10 for batch poultry.

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

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

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*excluded poultry* means batch poultry that is delivered to a processor under a pool fund payment agreement, being batch poultry that, pursuant to the relevant pool rules, is paid for otherwise than out of the pool fund.

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*pool fund*, in relation to batch poultry, means a fund established as referred to in section 11 (1).

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*pool fund payment agreement* means an agreement of the kind referred to in section 7 (1A) (a).

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*pool member* of a pool fund means a grower who is a party to a pool fund payment agreement in relation to that fund.

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*pool rules* of a pool fund means the rules determined for the pool fund as referred to section 11 (2).

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### [2] Section 3 (4)

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Insert after section 3 (3):

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

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### [3] Section 6 Functions of Committee

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Omit section 6 (c), insert instead:

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

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<b>[4] Section 7 Agreements between processors and growers to be in form approved by Committee</b>	1 2
Omit “designated poultry grown in a batch of 1,000 or more unless the designated poultry” from section 7 (1).	3 4
Insert instead “batch poultry unless the batch poultry”.	5
<b>[5] Section 7 (1A)</b>	6
Insert after section 7 (1):	7
(1A) An agreement referred to in subsection (1) (a) may be:	8
(a) a <i>pool fund payment agreement</i> , in which payment for poultry is made to the grower from a pool fund, or	9 10
(b) a <i>direct payment agreement</i> under which payment for poultry is made to the grower otherwise than from a pool fund.	11 12 13
<b>[6] Section 8 Approval of forms of agreement</b>	14
Insert after section 8 (3):	15
(4) The Committee must not approve a form of pool fund payment agreement unless:	16 17
(a) the agreement identifies the pool fund (or series of pool funds) from which payment to a pool member is made for batch poultry received under the agreement, and	18 19 20
(b) a copy of the pool rules for that fund has been lodged with the Committee under section 11 (6).	21 22
<b>[7] Section 9A</b>	23
Insert after section 9:	24
<b>9A Authorisations</b>	25
(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> :	26 27 28 29
(a) any agreements entered into between growers and processors for the purposes of this Act,	30 31

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(b)	the conduct of growers and processors in negotiating and entering into any such agreements,	1 2
(c)	the conduct of growers and processors in performing any such agreements,	3 4
(d)	the conduct of growers and processors in relation to the establishment, maintenance and administration of pool funds and the determination of pool rules,	5 6 7
(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.	8 9 10
	<b>Note.</b> Under section 10 (3) (a), the Committee must have regard to any suggested base rate in determining base rates.	11 12
(2)	Things authorised to be done by this section (1) 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 <i>Competition Code of New South Wales</i> .	13 14 15 16
<b>[8] Part 4</b>		17
	Omit the Part, insert instead:	18
	<b>Part 4 Payments to growers</b>	19
	<b>Division 1 Determination of base rates</b>	20
	<b>10 Committee to determine base rates</b>	21
(1)	The Committee may from time to time determine base rates for batch poultry.	22 23
	<b>Note.</b> The base rate is to be used in working out the amounts to be paid into a pool fund under section 12 and the amounts to be paid for batch poultry under section 12C.	24 25 26
(2)	Different base rates may be determined for different classes of batch poultry.	27 28
	<b>Note.</b> For example, different base rates may be determined for batch poultry grown under pool fund payment agreements and batch poultry grown under direct payment agreements, for different kinds of designated poultry, or for batch poultry grown in different regions or under different conditions.	29 30 31 32 33

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- (3) In determining base rates, the Committee is to have regard to the following: 1
- (a) any suggested base rate agreed to by processors and growers, 2
- (b) growing costs, 3
- (c) the species of poultry involved, 4
- (d) the duration of any relevant rearing period, 5
- (e) the annual throughput of poultry, 6
- (f) poultry housing density, 7
- (g) the needs of the industry, 8
- (h) market forces affecting the industry, 9
- (i) the public interest, 10
- (j) the reasonable minimum returns to growers while encouraging industry efficiency, 11
- (k) such other matters as the Committee thinks relevant. 12
- (4) A determination made under this section must be submitted by the Committee to the Minister for approval. 13
- (5) A determination has no effect unless approved by the Minister. 14
- (6) A determination, if approved by the Minister: 15
- (a) must be published in the Gazette and in such other manner as the Minister considers appropriate, and 16
- (b) takes effect: 17
- (i) on the date on which the determination is published in the Gazette (the *publication date*), 18
- or 19
- (ii) subject to subsection (7), on any other date or dates (whether before or after the publication date) as may be specified in the determination. 20
- (7) No determination may be made to take effect on a date or dates that is earlier than: 21
- (a) if the determination is made between 1 January and 30 June (inclusive) in a year—1 January of that year, or 22
- (b) if the determination is made between 1 July and 31 December (inclusive) of a year—1 July of that year. 23

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(8) The Committee must keep in the office of its secretary a Register of all determinations approved by the Minister.	1 2
(9) The Committee must make the Register available for inspection by processors and growers during business hours.	3 4
<b>Division 2      Payment under pool fund payment agreements</b>	5 6
<b>11   Pool funds and rules</b>	7
(1) A processor may establish, maintain and administer pool funds for the purpose of paying growers.	8 9
(2) A processor who establishes a pool fund must determine the pool rules according to which the fund is to be administered.	10 11
(3) So far as is reasonably practicable, a processor must consult with prospective pool members about pool rules.	12 13
(4) The pool rules for a pool fund must state:	14
(a) how and when a pool member's share in the pool fund is to be worked out and paid, and	15 16
(b) in what circumstances (if any) batch poultry becomes excluded poultry, and	17 18
(c) the way in which payment for excluded poultry is to be worked out and how and when a pool member is to be paid for excluded poultry.	19 20 21
(5) A processor may from time to time vary the pool rules for a pool fund, but only if at least 75% of all the pool members for the time being agree to the variation.	22 23 24
(6) A processor must give to the Committee copies of:	25
(a) the pool rules determined for each pool fund established by the processor, and	26 27
(b) any variation to those rules,	28
within 14 days after the determination or variation occurs.	29
<b>12   Payment into pool funds</b>	30
(1) A processor who receives batch poultry (other than excluded poultry) under a pool fund payment agreement must pay into the fund, for each bird received, an amount that is not less than	31 32 33

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	the base rate applicable to the class of batch poultry to which the bird belongs.	1 2
(2)	The processor must pay the amount into the fund within 28 days after the poultry is delivered to the processor.	3 4
(3)	Money paid into a pool fund is to be held by the processor in trust for the pool members.	5 6
<b>12A</b>	<b>Payment out of pool funds</b>	7
(1)	Each pool member who delivers batch poultry (other than excluded poultry) to a processor under a pool fund payment agreement is entitled to be paid out of the pool fund for the poultry so delivered.	8 9 10 11
(2)	The way in which each payment is to be worked out, and the time when each payment falls due, is to be as set out in the pool rules for the relevant pool fund.	12 13 14
(3)	Despite subsection (2), a pool member must be paid within 3 months after the poultry is delivered to the processor.	15 16
(4)	Interest at the rate payable on an unpaid judgment of the Supreme Court under the <i>Supreme Court Act 1970</i> is payable on any amount that remains unpaid after the payment falls due.	17 18 19
(5)	Nothing in this section prevents a processor from paying a pool member more than the member's share in the pool.	20 21
<b>12B</b>	<b>Payment for excluded poultry</b>	22
(1)	Each pool member who delivers excluded poultry to a processor is entitled to be paid for the poultry so delivered.	23 24
(2)	The way in which each payment is to be worked out, and the time when each payment falls due, is to be as set out in the provisions of the pool rules relating to excluded poultry.	25 26 27
(3)	Despite subsection (2), a pool member must be paid within 3 months after the poultry is delivered to the processor.	28 29
(4)	Interest at the rate payable on an unpaid judgment of the Supreme Court under the <i>Supreme Court Act 1970</i> is payable on any amount that remains unpaid more than 3 months after the poultry is delivered to the processor.	30 31 32 33

<b>Division 3</b>	<b>Payment under direct payment agreements</b>	1
<b>12C</b>	<b>Payment for batch poultry</b>	2
	(1) A processor who receives batch poultry under a direct payment agreement must pay to the grower, for each bird received, an amount that is equal to the base rate applicable to the class of batch poultry to which the bird belongs.	3 4 5 6
	(2) The processor must pay the grower within 28 days after the poultry is delivered to the processor.	7 8
	(3) Interest at the rate payable on an unpaid judgment of the Supreme Court under the <i>Supreme Court Act 1970</i> is payable on any amount that remains unpaid more than 28 days after the poultry is delivered to the processor.	9 10 11 12
	(4) Nothing in this section prevents a processor from paying a grower more than the amount that is payable to the grower under subsection (1).	13 14 15
<b>Division 4</b>	<b>Miscellaneous</b>	16
<b>12D</b>	<b>No contracting out</b>	17
	(1) This Part has effect despite any stipulation to the contrary in any agreement, contract or arrangement.	18 19
	(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.	20 21 22 23
<b>12E</b>	<b>Inspection and audit of pool funds</b>	24
	(1) The records of a pool fund may be inspected by any pool member during business hours at the office of the processor who established the pool.	25 26 27
	(2) The regulations may provide for the audit of the accounts of a pool fund.	28 29

<b>[9] Section 14 Powers of inspectors</b>	1
Omit “designated poultry grown in a batch of 1,000 or more” from section 14 (1) (a).	2
Insert instead “batch poultry”.	3
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<b>[10] Schedule 2, Provisions relating to the procedure of the Committee</b>	5
Insert at the end of the clause 6:	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.	7
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(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.	12
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(4) For the purposes of:	17
(a) the approval of a resolution under subclause (2), or	18
(b) a meeting held in accordance with subclause (3),	19
the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Committee.	20
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(5) A resolution approved under subclause (2) is, subject to the regulations, to be recorded in the minutes of the meetings of the Committee.	22
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(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.	25
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<b>[11] Schedule 3 Savings, transitional and other provisions</b>	1
Insert before clause 1:	2
<b>Part 1 General</b>	3
<b>[12] Schedule 3, clause 1A</b>	4
Insert after clause 1:	5
<b>1A Regulations</b>	6
(1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:	7
<i>Poultry Meat Industry Amendment (Price Determination) Act 2002</i>	8
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(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect:	12
(a) as from the appointed day or a later day if the provision is consequent on the enactment of this Act, or	13
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(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.	15
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(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:	19
(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	20
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(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.	22
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<b>[13] Schedule 3, clause 9</b>	1
Omit the clause, insert instead:	2
<b>Part 2 Savings and transitional provisions consequent on enactment of Poultry Meat Industry Amendment (Price Determination) Act 2002</b>	3
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<b>9 Past determinations and orders</b>	7
(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.	8 9 10 11 12 13
(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.	14 15 16 17 18 19
<b>10 Past payments</b>	20
(1) A payment to a grower made before the commencement of this clause in accordance with an agreement that provides for payment by means of a fund operating in the manner of a pool fund is validated.	21 22 23 24
(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.	25 26 27 28 29 30

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<b>11 Existing funds</b>	1
(1) A fund operating in the manner of a pool fund under an agreement existing at the commencement of this clause is taken to be a pool fund for the duration of the agreement or for the period of 6 months after the commencement of this clause, whichever is the shorter period.	2 3 4 5 6
(2) A processor who administers a fund referred to in subclause (1) must give to the Committee, within 28 days after the commencement of this clause:	7 8 9
(a) information as to the date when the fund is to cease, and	10
(b) a copy of the rules of the fund, as in force at the commencement of this clause.	11 12