

Review of the *Poultry Meat Industry Act 1986*

Information Paper

1. The Objectives of the Act

The objectives of the *Poultry Meat Industry Act 1986* (the Act) are identified in the long title of the Act as being:

- to constitute the Poultry Meat Industry Committee (PMIC) and to define its functions;
- to regulate and control the poultry growing industry;
- to repeal the *Chicken Meat Industry Act 1977*; and
- for other purposes.

While they give a broad overview of the nature of the legislation, these objectives do not expressly reveal the industry outcomes that the provisions of the Act are intended to achieve. These desired outcomes were, however, clarified in public statements made by the Government when the last major amendments were made to the Act in 2005 and primarily relate to ensuring that the contracts between processors and their growers are fair and reasonable.

The poultry meat industry is vertically integrated and highly concentrated both industrially and geographically. In NSW there are just four main poultry meat processing companies. Processors own and operate breeding farms, hatcheries, feed mills, processing plants and some growing farms. The industry is, however, characterised by having the majority of birds grown under contract on independent farms.

In contract situations, processors provide the birds, feed, veterinary services, medication and animal husbandry advice, and undertake processing, marketing and distribution. The contract growers receive the day-old chicks and grow the birds to market weight, at which point the processor collects the birds and pays the farmer the agreed per bird grow-out fee. The growers provide animal management, capital inputs such as land, housing and equipment, some variable inputs such as bedding, gas and electricity, and are responsible for waste disposal.

The relationship between processors and growers is one of strong mutual dependence in meeting the needs of the marketplace and balancing meat demand and bird supply. That relationship, particularly as expressed in the grow-out contract, has been regulated in NSW since the mid-1970s, most recently under the *Poultry Meat Industry Act 1986*. The proposition underpinning this intervention has been that contract growers are in a weak bargaining position relative to processors and that statutory protection is required to prevent market power abuse.

2. Key provisions of the legislation

The Act provides statutory authority for collective bargaining by poultry growers in their negotiations with poultry processors and establishes arrangements to facilitate individual processors negotiating privately with their group of contract growers. However, growers also have the freedom to choose whether they wish to participate in collective bargaining with their peers or whether they would prefer to negotiate independently with a processor.

The Act applies only to “designated poultry”, defined as chickens and turkeys below certain ages.

Part 2 of the Act constitutes the PMIC, which comprises three people independent of the Department of Primary Industries and industry participants. At least one member must be a person skilled in mediation or arbitration. The selection of the members of the PMIC is at the discretion of the Minister for Primary Industries.

The PMIC's primary roles are to:

1. establish a code of practice for negotiations between growers and processors to ensure they are conducted in an orderly manner and are fair and reasonable to both parties. The code of practice was formally established in May 2011. The regulations require all poultry growing agreements (PGAs) to be negotiated in accordance with the code;
2. establish guidelines as to the matters that PGAs *might* address. Relevant guidelines for the drawing up of agreements between processors and growers were established in 2008. These guidelines are not mandatory but are provided to assist in the orderly development of agreements between processors and growers;
3. make recommendations to the Minister regarding matters that should be mandated by regulation as matters that *must* be addressed in PGAs. Section 11 of the *Poultry Meat Industry Regulation 2008* (the Regulation) prescribes matters that the PMIC has recommended in this regard. In summary, the required content of PGAs covers administrative issues, price negotiation, contract payments, dealing with abnormal losses and dispute resolution;
4. facilitate the resolution of disputes between growers and processors;
5. inquire into, and make reports to the Minister on such matters relating to the poultry meat industry as the Minister refers to the Committee for inquiry and report, and
6. investigate such other matters relating to the poultry meat industry as the Committee considers appropriate for inquiry and report.

PMIC is required to seek the advice of the Poultry Meat Industry Advisory Group (PMIAG), which is established under Part 2A of the Act. The PMIAG consists of seven persons appointed by the Minister, the Chair being an independent person nominated by the Minister and the others being three representatives of growers and three representatives of processors.

The Act and Regulation require processors to notify the Department of Trade and Investment, Regional Infrastructure and Services that they have entered into a contract with a grower. This provision is directly linked to disease control and ensures that the Department always has an up-to-date record of poultry farms and is thus well positioned to respond rapidly and effectively to disease incidents. The associated notification fee also provides a stream of revenue to fund the costs of the PMIC and PMIAG.

Part 5 of the Act authorises inspectors to search and inspect poultry growing premises for any records relating to the production of batch poultry and for agreements made for doing so for the purpose of ascertaining whether an offence against the Act or regulations has been committed. This part of the Act provides details regarding the:

- powers of the inspectors;
- questions that can be asked by the inspectors;
- search warrants, and
- obstruction of the inspectors.

3. Why review the Act?

The Act amendments made in 2005 included a requirement for a review within three years of the commencement of the new provisions (see section 26 of the Act). This statutory

review was conducted in 2009, with the review report tabled in Parliament on 11 May 2010. The statutory review recommended that a further review be undertaken. This further review process was deferred due to the State Election and subsequent change of government in early 2011.

The Department of Primary Industries has now requested a review to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain the most appropriate way of securing those objectives. The review will report on whether there should be regulatory change.

4. What will be reviewed?

The review of the *Poultry Meat Industry Act 1986* will:

1. identify the policy objectives of the legislation and assess whether they are still relevant; and in accordance with COAG National Reform Agenda Competition Principles,
2. assess whether:
 - i. the objectives of the legislation can only be achieved by the provisions of the Act which regulate certain business arrangements (i.e., restrict competition) in the poultry meat industry;
 - ii. the existing restrictions on competition deliver net benefits to the community as a whole; and
 - iii. the existing restrictions on competition are the minimum required to achieve the objectives of the legislation.

The NSW Government is seeking broad stakeholder engagement in the review. **The types of issues that stakeholders may wish to consider are:**

- Is statutory intervention to prevent abuse of market power by poultry processors over growers still required?
- Is regulatory intervention between growers and processors by the NSW Government the only available mechanism to ensure fair and reasonable poultry growing agreements between processors and growers in NSW?
- Are the provisions of the *Poultry Meat Industry Act 1986* the most effective mechanism for ensuring fair and reasonable poultry growing agreements between processors and growers in NSW?
- Is the code of practice for the conduct of negotiations between processors and growers established under the Act still relevant?
- Is the code of practice for the conduct of negotiations between processors and growers typically adhered to by both parties?
- Has the code of practice for the conduct of negotiations between processors and growers been effective in ensuring that negotiations are conducted in an orderly manner that is fair and reasonable to both parties?
- Are the guidelines for the drawing up of agreements between processors and growers established by the Poultry Meat Industry Committee still relevant?
- To what extent do current agreements between processors and growers reflect the guidelines for the drawing up of agreements between processors and growers?
- Have the guidelines for the drawing up of agreements between processors and growers assisted in the orderly development of fair and reasonable agreements between processors and growers?
- To what extent do current agreements between processors and growers comply with the *Poultry Meat Industry Regulation 2008*, which provides for certain matters which must be addressed in any agreement? Is a regulatory requirement of this nature still relevant?

- Is a statutory process and requirement for the facilitation of disputes between growers and processors still necessary?
- To what extent has the dispute resolution function of the PMIC been utilised in the past five years?
- Do other industry groups, committees or councils exist which might provide an alternative mechanism for promoting the chicken meat industry and engaging with the NSW Government?
- Does the Poultry Meat Industry Committee adequately represent the views and interests of all stakeholders in the NSW chicken meat industry in its engagement with the NSW Government?

5. What is the review process?

The review will be undertaken by the Strategic Policy & Economics Division (SP&E) of NSW Trade & Investment, as follows:

- i. this Information Paper will be circulated to stakeholders in conjunction with advertisements in industry and regional newspapers calling for submissions, which will be considered and evaluated;
- ii. public meetings will be held in the key production regions (Tamworth, Maitland, Mangrove Mountain, Penrith and Goulburn to explain the review and encourage submissions from stakeholders;
- iii. targeted meetings will be held with key industry stakeholders to explain the review and encourage submissions;
- iv. the Poultry Meat Industry Committee and Advisory Group will be closely consulted in the course of the review; and
- v. the review will report to the Minister for Primary Industries by 31 August 2013.

The NSW Government invites written submissions to the review. Submissions can be sent to the postal address below or emailed to poultry.review@industry.nsw.gov.au :

Review of Poultry Meat Industry Act 1986
 c/- Ms Julia Trethowan
 NSW Trade & Investment
 Locked Bag 21
 Orange NSW 2800

Persons making submissions should indicate whether they wish them to remain confidential. Submissions that are not marked 'confidential' may be made available to the public.

The deadline for written submissions is Friday, 28 June 2013.