

Chicken Meat Industry Amendment Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the *Chicken Meat Industry Amendment Bill 2011*.

Policy objectives and the reasons for them

The *Chicken Meat Industry Committee Act 1976* (the CMIC Act) provides a legislative framework for the stabilisation of the chicken meat industry in Queensland. Importantly, the Act provides a framework for collective bargaining negotiations between chicken meat growers and chicken meat processors that is specifically authorised and approved for the purposes of the Commonwealth *Competition and Consumer Act 2010* (the C&CA), formerly (until 31 December 2010) titled the *Trade Practices Act 1974* (the TPA).

In accordance with National Competition Policy (NCP) requirements, a review of the CMIC Act was carried out in 2010.

The key recommendation from the review exercise was for the retention of the legislative provisions for collective bargaining arrangements and for the retention of the C&CA ‘authorisation’. In and of itself, this does not necessitate amendment of the CMIC Act as the relevant provisions are not ‘sunsetting’ (ie. do not have a legislated expiry date).

However, prior to the Act review commencing, the Queensland Government had accepted a recommendation from the Review of Government Bodies in 2009 (*“Brokering Balance: A Public Interest Map for Queensland Government Boards, Committees and Statutory Authorities”*) that the Chicken Meat Industry Committee (the committee) be abolished as a statutory body. Also the Queensland Government agreed that the committee be replaced by an industry-owned non-statutory entity, upon completion of the review of the Act and consideration of the review’s recommendations.

Achievement of policy objectives

The Bill amends the Act to implement the Government Bodies review decision and the recommendations of the CMIC Act review report. The opportunity will also be taken to make minor amendments arising from the review of the Act.

Alternative ways of achieving policy objectives

The transition of the committee to a non-statutory industry-owned corporate entity cannot be satisfactorily achieved without a legislative anchor.

Estimated cost for government implementation

It is not anticipated that implementation of this Bill will result in any costs to the Queensland Government.

Specifically, the proposed amendments to the CMIC Act to facilitate the transition of the committee to a non-statutory form will not have any financial impact on the Department of Employment, Economic Development and Innovation. The Government has not provided financial support to the committee. In accordance with the standard arrangements used for previous conversions of statutory bodies into limited liability companies all the assets and liabilities of the committee will be transferred to the replacement company. The State of Queensland will not take on any liability.

Stamp duty will be payable by the committee in respect of the incorporation and transfer of assets and liabilities. Although industry may seek an ex gratia 'refund' of the stamp duty amount it will be a matter for decision by Treasury. The Bill does not provide for statutory exemption from stamp duty.

Consistency with fundamental legislative principles

Issues about consistency with fundamental legislative principles contained in section 4 of the *Legislative Standards Act 1992* (LSA) have been raised in respect of one of the provisions of this Bill.

Legislation should have sufficient regard to rights and liberties of individuals – LSA s4(2)(a)

Clause 7 of the Bill abolishes the committee and deletes provisions in the Act that provide for its establishment and operation. New section 19M (one of the new sections of the Act being inserted by Clause 8) terminates the

term of office of the members of the committee as at the date of transfer of the assets and liabilities of the committee to the replacement corporation.

The potential fundamental legislative principle issue is in regard to whether a member of a statutory board is deprived of office without compensation. In circumstances where the term of office of board members is curtailed by an Act, it is usual for the legislation in question to specifically provide either for compensation to be paid, or alternatively, to negate any right of a board member to claim or be paid compensation.

The current term of office of the members of the committee will expire on 20 May 2013.

The effect of new section 19M subsection (1) will be to curtail that term on and from the day that the committee's assets and liabilities transfer to the replacement corporation and the committee goes out of legal existence.

While it is not yet possible to nominate a precise date for the 'transfer day', as this will be dependant on the passage of this Bill and subsequent commencement of new section 19M, it is likely that this will be before the end of the current term of office of the committee members.

New section 19M subsection (2) provides that no compensation is payable to any person because of subsection (1).

It is considered that this exclusion of compensation is justified. Membership of the committee is part-time only and members are paid sitting fees and allowances for attendance at board meetings. The fees are comparatively low and designed to compensate members for the time absent from normal employment. However, as board members will not need to be absent from employment when a board is dissolved, the approach has been adopted that compensation is not justified.

There is no legislative barrier to any of the members of the committee being appointed subsequently to the board of the replacement corporation – this will be a matter for the shareholders or guarantors, as the case may be, of the replacement corporation to determine, as will be the matter of the appropriate level of board members' remuneration.

It has been normal practice to exclude the payment of compensation to members of a statutory primary industry body undergoing a legislative restructuring exercise of the type set out in this Bill (that is to say, where the statutory body is being abolished after transfer of its assets and liabilities to a non-statutory replacement entity).

Consultation

The amendments have been discussed in detail with the committee.

The Department of the Premier and Cabinet, Queensland Treasury (including the Queensland Office of Regulatory Efficiency), the Department of Justice and Attorney-General and Queensland State Archives have been consulted on all of the amendments.

Consistency with legislation of other jurisdictions

New South Wales also has legislation that anchors collective bargaining negotiations between chicken meat growers and processors and which provides for C&CA ‘authorisation’.

There is no national requirement for consistency of State legislative provisions in this area.

Notes on provisions

Clause 1 provides that the short title of the Act is the *Chicken Meat Industry Amendment Act 2011*.

Clause 2 provides that the Act will commence on a day to be fixed by Proclamation. There will need to be a staged commencement of the provisions in the amendment Act. New Part 2A will need to commence first, as the committee will have a role to facilitate the transfer to the replacement corporation. Also, it will be able to continue to exercise its functions pending its dissolution. The remaining provisions are proposed to commence on the day on which the assets and liabilities of the committee are to be transferred to the replacement entity (see new section 19C in clause 8).

Clause 3 provides that the Act being amended is the *Chicken Meat Industry Committee Act 1976*.

Clause 4 amends the long title of the Act so that in future it will be “An Act relating to the stabilisation of the chicken meat industry.” whereas the present long title reads “An Act relating to the stabilisation of the chicken meat industry, to establish a chicken meat industry committee and for

related purposes'. Following the amendments to the Act contained in this Bill, it will no longer be appropriate to refer to the committee in the long title.

Clause 5 amends the short title of the Act in a similar manner so that in future it may be cited as the *Chicken Meat Industry Act 1976*.

Clause 6 amends section 2 (Definitions) of the Act by removing definitions that will become redundant upon passage of the amendments, and inserts new definitions that explain terms used in the new Part 2A to be inserted into the Act by clause 8.

Clause 7 amends the Act by deleting all of the existing Part 2 of the Act dealing with the constitution and operation of the committee as a statutory body. The effect of this clause is to delete the existing sections 3 to 19 of the Act.

Clause 8 inserts two new Parts into the Act, namely new Part 2A and new Part 2B.

New Part 2A (Matters about dissolution of Chicken Meat Industry Committee) contains 13 new sections grouped in two new Divisions:

1. Division 1 (Preliminary), comprising new section 19A;
2. Division 2 (Dissolution of committee), comprising:
 - Subdivision 1 (Steps to transfer and dissolution), new sections 19B to 19H; and
 - Subdivision 2 (Provisions facilitating transfer), new sections 19I to 19M.

New Part 2B (Provisions about replacement corporation) contains new sections 19N to 19P.

New section 19A (Definitions) explains a number of new words and expressions used in the new Part 2A.

New section 19B (Decision to transfer to replacement corporation) requires the committee to make the decision to dissolve itself and to transfer its assets and liabilities to a replacement non-statutory corporation.

New section 19C (Committee to decide particular matters for transfer) links to the previous section and requires the committee to decide both the day for the transfer of assets and liabilities (the 'proposed transfer day'), and the corporation to which the assets and liabilities will be transferred (the 'replacement corporation').

New section 19D (Conditions for transfer) imposes certain mandatory requirements in respect of the replacement corporation. The committee can only decide to nominate a specific entity to be its replacement corporation if all the conditions set out in section 19D are met. One of the key conditions is that the replacement corporation is to be a company limited by guarantee.

New section 19E (Notice of decision about replacement corporation) requires the committee to notify the Minister of all relevant matters (as per new sections 19B and 19D) relating to the transfer by the committee, and describes what information the notice must contain.

New section 19F (Minister's decision about transfer) outlines the process for Ministerial approval of the transfer arrangements. Of particular note is that the Minister must, by notice given to the committee, approve the proposed transfer day, and the day as so approved by the Minister must be declared by gazette notice, and accordingly will be on the public record.

New section 19G (Transfer and dissolution) is a mechanical provision which dissolves the committee on the day the assets and liabilities are transferred to the replacement corporation.

New section 19H (Replacement corporation does not represent the State) ensures that the State is not responsible for any actions of the replacement corporation.

New section 19I (Registration of transferred assets) provides for the legal recognition of the transfer of the ownership of the assets to the replacement corporation so that those assets may be registered under relevant State and Commonwealth laws.

New section 19J (References to the committee) is a transitional provision which automatically translates existing references to the committee, in legislation and documents, to the replacement corporation.

New section 19K (Continuity of proceedings and matters) provides continuity between the committee and the replacement corporation for the purposes of allowing the start or completion of proceedings and actions which could have been, or were, started before dissolution.

New section 19L (Employees) safeguards the employees of the committee so that the terms of the employment are replicated as between the employees and the replacement corporation.

New section 19M (Members stop holding office) terminates the membership of the committee as at the transfer date, with no recourse to compensation.

New section 19N (Function) sets out the replacement corporation's statutory functions under the Act which will be to facilitate collective negotiations for agreements, including, for example, by convening a group comprising representatives of growers and a processor to negotiate agreements; and recommending procedures, including codes of conduct, for the group in the negotiations. This allows the replacement entity to continue to exercise a key function of the committee.

New section 19O (Powers) enables the replacement corporation to do anything necessary or convenient to be done for performing its function (as described in the previous paragraph in regard to new section 19N), and to allow the replacement entity to make a charge for registering agreements under section 24B of the Act (a power currently exercisable by the committee) and for any other services it provides.

New section 19P (Chairperson) provides, in accordance with the wishes of both the growing and the processing sectors of the industry, that the replacement corporation's chairperson must be a director who has recognised expertise in corporate governance, and is independent of chicken meat industry representative bodies, chicken meat processors and chicken meat growers. The committee currently has an independent chairperson, and a continuation of this arrangement is a key issue in securing support for this legislation from both the growing and processing sectors of the industry.

Clause 9 amends the existing Part 3 heading (Agreements and dispute resolution) by omitting the words 'and dispute resolution'.

Clause 10 omits the existing Part 3 division 1 heading (Agreements).

Clause 11 inserts a new section 21 (Dispute resolution) which provides that a written agreement between a chicken meat grower and a processor must state a process for dispute resolution between the parties to the agreement, and that the parties must attempt to resolve any dispute by using that process.

This reflects an outcome of the Act review and replaces the more detailed arrangements found in Part 3 Division 2 (Dispute resolution) of the existing Act, which are being repealed as part of clause 12.

Clause 12 amends the Act in two respects. Firstly, the clause omits existing section 22A (Grower's contribution to registration and annual fees) as that section is no longer relevant with the abolition of the committee as a statutory body. Secondly, the clause omits the existing Part 3 Division 2 (Dispute resolution), which comprises sections 23 (Mediation) and 24 (Arbitration) as those provisions are replaced by the new section 21 (clause 11 refers).

Clause 13 amends the existing Part 3A heading (Registration of agreements and annual fees) by omitting 'and annual fees'.

Clause 14 omits the first of the two existing division headings in the existing Part 3A as there will no longer be any divisions.

Clause 15 amends section 24A (Committee to keep register) of the Act to provide that the replacement corporation take responsibility in future (in place of the committee) for keeping the register of agreements between chicken meat growers and processors as required under the Act.

Clause 16 amends section 24B (Application for registration) of the Act and follows on from the previous amendment. The amendment replaces a reference to the committee with a reference to the replacement corporation, and also requires the replacement corporation to register agreements given to it, and to give notice of such registration to the applicant.

Clause 17 amends the Act in two respects. Firstly, it omits existing section 24C (Registration) which is no longer relevant as it refers to a function of the committee which in future will be undertaken by the replacement corporation as provided for in the amended section 24B (clause 16 refers). Secondly, it omits the second of the two existing division headings in the existing Part 3A division 2 and omits section 24D which relates to payment of statutory annual fees.

Clause 18 makes two amendments to the Act. Firstly, the existing section 25 (Protection of members) is omitted as it is no longer necessary to provide legal protection for members of the committee for actions done in good faith and without negligence, as the committee will no longer exist as a legal statutory entity.

Secondly, a new requirement is inserted by way of new section 25 (Review of Act) which provides that the Act will be subject to a further review within 10 years, and for the Minister to table a report of the review in the Legislative Assembly. The present Act does not contain any specific review requirement, although it is common practice with contemporary

legislation to contain a requirement for periodic review so as to ensure that the legislative arrangements adequately meet community expectations and its provisions remain appropriate.

Clause 19 inserts a new Part 5 (Transitional provisions for Chicken Meat Industry Amendment Act 2011). There are seven new sections in Part 5.

New section 27 (Definition for pt 5) contains new definitions for the purposes of Part 5.

New section 28 (Public records of committee) provides that any records of the committee on the transfer day that fall within the definition of a 'public record' (as per the *Public Records Act 2002*) will be thereafter considered to be public records of the Department of Employment, Economic Development and Innovation.

New section 29 (Disposal of public records) links with new section 19I and provides that the transfer documentation referred to in that section identifying those transferred assets, which are considered to be public records such as the register of agreements, can be disposed of legally in accordance with the *Public Records Act 2002*.

New section 30 (Existing register of agreements) provides that the existing register of agreements between chicken meat growers and each processor, currently held by the committee, continues in existence, notwithstanding the fact that the register will in future be kept by the replacement corporation (in accordance with the amendment to the Act made by this Bill (clause 15 refers).

New section 31 (Application for registration) is a transitional provision to ensure that any application for registration of a new agreement between chicken meat growers and each processor, that is undecided by the committee under the existing section 24B at the date of commencement of these amendments to the Act, will have to be decided by the replacement corporation in accordance with the amendments to section 24B made by this Bill (clause 16 refers).

New section 32 (Mediation of prescribed disputes on or after transfer day) is a transitional provision that deals with any dispute between a grower and a processor about an agreement or proposed agreement, that arose before the commencement of this section where certain criteria apply on or after the transfer day (when the committee will no longer be in existence). The new section ensures that any such dispute which the committee has been advised of before commencement (the prescribed dispute) which has not

yet been referred to mediation under the arrangements set out in section 23 (which is being repealed), can be referred by the replacement corporation to independent mediation if the dispute is not resolved within 90 days after it arose, or if asked by the parties to the dispute.

New section 33 (Arbitration of prescribed disputes on or after transfer day) is a transitional provision that provides for a prescribed dispute which is about an amount payable under the agreement and has not yet been resolved by mediation under the arrangements set out in new section 32, and a dispute between parties to an agreement about an amount payable that was referred to mediation under the previous section 23 and is not resolved by mediation, to be referred by the replacement corporation to independent arbitration.

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