



Chicken Meat Industry Committee Amendment Bill 2014

Report No. 37
**Agriculture, Resources and Environment
Committee**
March 2014

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Acknowledgements

The committee thanks submitters and the officers who briefed the committee on the Bill.

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Abbreviations

ACCC	Australian Competition and Consumer Commission
CMIC	Chicken Meat Industry Committee
CMIC Act	<i>Chicken Meat Industry Committee Act 1976</i> (Qld)
DAFF	Department of Agriculture, Fisheries and Forestry
QCGA	Queensland Chicken Growers Association

Chair's foreword

This report presents the findings from the committee's inquiry into the Chicken Meat Industry Committee Amendment Bill 2014 which was introduced on 11 February 2014 by Hon John McVeigh MP, Minister for Agriculture, Fisheries and Forestry.

This Bill provides for the dissolution of the Chicken Meat Industry Committee and the repeal of the *Chicken Meat Industry Committee Act 1976*, both considered redundant aspects of state government intervention in an industry now sufficiently mature and keen to take full responsibility for its own financial stability.

In its examination of the Bill, the committee has noted that the proposed reforms are consistent with a national trend of moving away from the use of state based legislative collective negotiations and accordingly that this Bill has the full support of the chicken meat industry.

I commend the report to the House.

A handwritten signature in blue ink, appearing to read 'Ian Rickuss'.

Ian Rickuss MP

Chair

March 2014

Recommendation

Recommendation 1

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The committee recommends that the Chicken Meat Industry Committee Amendment Bill 2014 be passed.

1. Introduction

1.1 Role of the committee

The Agriculture, Resources and Environment Committee (the committee) is a portfolio committee established by a resolution of the Legislative Assembly on 18 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.¹

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles.²

In relation to the policy aspects of Bills, the committee considers the policy intent, approaches taken by departments to consulting with stakeholders and the effectiveness of the consultation. The committee may also examine how departments propose to implement provisions in Bills that are enacted.

Fundamental legislative principles are defined in Section 4 of the [Legislative Standards Act 1992](#) as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

1.2 The referral

On 11 February 2014 Hon John McVeigh MP, Minister for Agriculture, Fisheries and Forestry introduced the Chicken Meat Industry Committee Amendment Bill 2014. The Legislative Assembly referred the Bill to the Agriculture, Resources and Environment Committee for examination. The committee was given until 12 March 2014 to table its report to the House, in accordance with SO 136(1).

1.3 The committee's processes

In its examination of the Bill, the committee:

- identified and consulted with likely stakeholders on the Bill
- sought advice from the Department of Agriculture, Fisheries and Forestry (DAFF) on the policy drivers for each amendment proposed, a summary of consultation undertaken, and details of the outcomes of that consultation
- invited public submissions on the Bill, receiving two submissions from industry stakeholders. These are listed at **Appendix A**.
- sought expert advice on possible fundamental legislative principle issues with the Bill and advice from DAFF on the issues raised, and
- convened a public briefing with departmental officers on 5 March 2014.

The briefing officers who assisted the committee are listed at **Appendix B**.

¹ Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland.

² Section 93 of the *Parliament of Queensland Act 2001*.

2. Examination of the Chicken Meat Industry Committee Amendment Bill 2014

2.1 Policy objectives

The objective of the Bill is to abolish the Chicken Meat Industry Committee (CMIC) and remove the legislative framework for collective bargaining that is provided under the *Chicken Meat Industry Committee Act 1976* (CMIC Act)³.

Accordingly, the Bill will amend the CMIC Act to introduce new provisions necessary to give effect to the dissolution of the committee and provide for the CMIC Act's repeal⁴.

2.2 Background

Legislation for the stabilisation of the chicken meat industry in Queensland commenced in 1976. The reason that stabilisation mechanisms were first legislated was to address market failure. The market failure arose through an imbalance of bargaining power between the processors and chicken meat contract growers, which resulted in a large number of commercial disputes between growers and processors.⁵

The original legislation allowed the Chicken Meat Industry Committee to mediate in disputes and negotiate prices between processors and growers. Following a national competition policy review of the legislation in 1997-98, the functions of the committee relating to direct activity in the marketplace were removed from this legislation.⁶ These functions were replaced with the ones that are in the act now. To enable the Chicken Meat Industry Committee to facilitate collective negotiations for agreements an explicit authorisation to allow collective bargaining between growers and processors which would otherwise be illegal under the *Competition and Consumer Act 2010* (Commonwealth) was included in the act.⁷

Over the last five years, the Queensland chicken meat industry has grown on average five per cent per annum such that the Queensland industry represents approximately 20 per cent of the national industry (with New South Wales and Victoria representing approximately 40 per cent and 20 per cent of the national industry respectively).⁸ There are three major processors, Inghams, Golden Cockerel and Baiada Poultry trading as Steggles, operating in the Queensland industry. All the major processors have hatchery and meat chicken growing farms. Excluding the farming operations of the processors, there are about 78 contract meat chicken farm business entities operating 90 farms.⁹

As noted above, the amendments to the CMIC Act will abolish the CMIC. This is in line with the findings of the Webbe-Weller Review, an independent review of Queensland Government boards, committees and statutory authorities conducted between July 2008 and March 2009, the aim of which was to:

- reduce bureaucracy and unnecessary red tape
- improve the overall efficiency of government bodies, and maintain the integrity and security of necessary regulatory functions.¹⁰

³ Chicken Meat Industry Committee Amendment Bill 2014 (CMICA Bill), Explanatory Notes, p.1.

⁴ CMICA Bill, Explanatory Notes, p.1.

⁵ Darlington, J. 2014, *Draft briefing transcript*, 5 March, p.1

⁶ Darlington, J. 2014, *Draft briefing transcript*, 5 March, pp.1-2.

⁷ CMICA Bill, Explanatory Notes, p.1.

⁸ DAFF, 2014, *Correspondence*, 5 March.

⁹ Darlington, J. 2014 *Draft briefing transcript*, 5 March, pp.1-2.

¹⁰ Webbe, S. and Weller, P. 2009, *Brokering Balance: a Public Interest Map for Queensland Government Bodies – Part B Report*, Department of Premier and Cabinet: Brisbane, March, pp.4-5.

The review report, *Brokering Balance: A Public Interest Map for Queensland Government Bodies*, contained 210 recommendations. In relation to the Chicken Meat Industry Committee, the review noted:

Where no strong Public Interest Case has been made for the continuance of a body, the Department can either outsource the function or expect industry to provide the service itself.... In relation to the Chicken Meat Industry Committee, if it is deemed the function is still needed, it can be undertaken by an industry funded non-statutory body.¹¹

In 2010, the Government undertook a review of the *Chicken Meat Industry Committee Act 1976* (CMIC Act), and a Bill to amend the CMIC Act and abolish the CMIC was tabled in the Queensland Parliament. This Bill was referred to the then Environment, Agriculture, Resources and Energy Committee for consideration. When the 2012 Queensland State election was called, the Bill was still within the jurisdiction of the parliament, was deemed to have lapsed and was referred back to the relevant State agency.

This meant that the status quo arrangements remained pending further consideration. Whilst the term of office of the current CMIC members expired on 20 May 2013, in accordance with section 5(1) of the CMIC Act, members continue to hold office pending further notification.

2.3 Significant provisions of the Bill

Clause 6 of the Bill provides for the removal of existing provisions relating to the mediation and arbitration of disputes. These provisions are being omitted as they are redundant in light of transitional arrangements for outstanding disputes established under new sections 42 of the Bill (detailed below).¹²

Clause 7 removes existing provisions for the registration of agreements and payment of associated annual registration fees which in effect becomes a redundant function of the abolished committee.¹³

Clause 8 inserts three new parts into the act necessary to give effect to the abolition of the committee (Part 5 s27-s39), resolve transitional issues (Part 6 s40-s43), and provide for the CMIC Act's repeal (Part 7 s44).¹⁴

Part 5. Abolition of the Committee

The Bill provides for the CMIC members to determine an eligible entity to which to transfer its assets and liabilities and determine an agreed date on which the transfer will occur prior to the CMIC's abolishment (s28). An eligible entity can be an incorporated association, public company without share capital or a non-trading cooperative charged with promoting the interests of the chicken meat industry, and may not be an industrial association (s29). The Committee must notify the Minister about its decision for the proposed transfer (s30), who may then approve or refuse to approve the transfer based on whether they are satisfied that all requirements for the transfer as defined under the act have been satisfied (s31). Following approval, the Minister must also declare the transfer day and transferee by gazette notice.¹⁵

The Bill provides that the abolition of the committee will be effective immediately after the transfer of its assets and liabilities, and membership of the committee will also be terminated at this time (s36). Any contract to which the committee is a party to immediately before the transfer day, ends

¹¹ Webbe, S. and Weller, P. 2009, 'Brokering Balance: a Public Interest Map for Queensland Government Bodies – Part B Report,' March 2009, Department of Premier and Cabinet: Brisbane, March, p.94.

¹² CMICA Bill, Explanatory Notes, p.5.

¹³ CMICA Bill, Explanatory Notes, p.5.

¹⁴ CMICA Bill, Explanatory Notes, p.5.

¹⁵ CMICA Bill, Explanatory Notes, pp.5-6.

on the date of transfer without compensation payable (s37) and that the records of the committee, other than public records are to be transferred to the department on transfer day also (s38).¹⁶

If after six months following the commencement of the Bill no approval notice has been issued by the Minister, the Minister may make the determination in full (including making a decision on the transfer date and the eligible entity to which assets and liabilities will be transferred) and thereby effecting the abolishment of the CMIC (s32) and bypassing the consideration by the CMIC members.¹⁷

Part 6. Transitional issues

The Bill provides that any negotiated agreements (between growers and processors) in force immediately before the repeal of the CMIC Act, remains in force after the repeal until it is terminated or otherwise ends (s40). Any applications to register an agreement made prior to the commencement of the amended act and which have not been processed/registered are deemed to have lapsed at the commencement of Act and the processors are to be notified by the committee and reimbursed applications fees paid (s41). Any unresolved disputes before the CMIC must be referred by the CMIC to an arbitrator appointed by the committee but not without the agreement of the parties to the dispute.¹⁸

Part 7. Repeal of the Act

The Bill provides that the CMIC Act is repealed immediately after the transfer of assets and liabilities and abolition of the committee occurs (the transfer day).¹⁹

2.4 Consultation

The Department advised that the Bill has been developed in consultation with the CMIC.

Due to the Government's earlier review of the CMIC and the previous tabling in 2012 of a similar amendment bill, key stakeholders have been well aware of the Government's intention to abolish the CMIC and repeal of the CMIC legislation.

Submissions to the committee's previous inquiry suggested that stakeholders did not support the abolition of the CMIC and repeal of the Act. This was primarily due to concern over the imbalance between processors and growers and lack of alternative arrangements to provide for collective negotiations and arbitration of contract negotiation between chicken meat industry participants.

On this basis, the Queensland Chicken Growers Association has since obtained authorization to collectively bargain from the Australian Competition and Consumer Commission (ACCC) in order to facilitate collective negotiations on behalf of industry following the proposed repeal of the CMIC Act (Qld). The authorisation effectively replaces the framework under the Queensland legislation and renders it redundant.

The Department also consulted with the Office of Best Practice Regulation, within the Queensland Competition Authority who advised that a regulatory Impact Statement (RIS) was not required because the amendments were unlikely to impose a significant regulatory burden.

2.5 Submissions

The committee invited submissions from key stakeholders. The two submissions received supported the intent of the Bill, and raised no issues that required a response from the department.

¹⁶ CMICA Bill, Explanatory Notes, p.7.

¹⁷ CMICA Bill, Explanatory Notes, pp.6-7.

¹⁸ CMICA Bill, Explanatory Notes, p.7.

¹⁹ CMICA Bill, Explanatory Notes, p.8.

2.6 Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. After examining the form and policy intent of the Bill, the committee determined that the Bill should be passed.

Recommendation 1

The committee recommends that the Chicken Meat Industry Committee Amendment Bill 2014 be passed.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee sought advice from DAFF in relation to two possible fundamental legislative principles issues and a potential drafting issue. The following sections discuss the issues raised by the committee and the advice provided by the department.

3.1 Clear and Precise

Section 4(3)(k) *Legislative Standards Act 1992* - Is the bill unambiguous and drafted in a sufficiently clear and precise way?

Clause 31 (Ministers decision about committee notice) of the Bill provides that the minister must give the CMIC a notice approving the proposed transfer of the CMIC’s assets and liabilities and declare the transfer day and transferee by gazette notice. If the minister does not consider that all requirements have been complied with, a written direction about compliance must be forwarded to the CMIC.

Clause 31(4) of the Bill states that the CMIC must comply with the direction. It says:

The committee must comply with a direction given under subsection (3)(a) within the reasonable time stated in the direction.

The Scrutiny of Legislation Committee (SLC) identified that the Bill is silent on what constitutes ‘reasonable time’ and suggested that it would be preferable for the CMIC to be given a clear timeframe to respond if a written direction is given by the minister.

Request for advice:

The committee requested further information from the department as to what would constitute ‘reasonable time’ for the CMIC to respond to the minister if a direction notice was to be given.

DAFF’S response:

What would constitute ‘reasonable time’ is taken to have the general common law meaning. Generally, a ‘reasonable time’ is a time period which is not unreasonable under the circumstances. This would mean a timeframe that enables the CMIC to carryout the direction without imposing unnecessary burden on the CMIC under the circumstances at the time the direction is given.

To impose a specific time period in the legislation is not desirable as flexibility is required for compliance with a direction given by the Minister. This provision as worded allows the Minister to choose a time period which will reflect the scope of the direction and CMIC’s circumstances at the time. This will ensure that sufficient time is provided to comply with the direction. It is also noted that, where, for whatever reason, the CMIC does not meet the timeframe given, there is no penalty for failing to comply with a direction within a reasonable time.

Committee comment:

The committee notes and is satisfied by the department’s advice.

3.2 Rights and Liberties of individuals

Section 4(2)(a) *Legislative Standards Act 1992* – Does the Bill have sufficient regard to the rights and liberties of individuals?

Clause 42 (Unresolved disputes must be referred to arbitrator) of the Bill provides that unresolved disputes at the time of commencement or disputes arising after commencement must be referred to an arbitrator nominated by the CMIC, but not without the prior agreement of the parties to the dispute. Should parties not agree to the appointment by the transfer day the dispute will be taken to have ended.

A potential FLP issue could arise where the parties to a dispute may not be afforded sufficient time to agree to the appointment of an arbitrator prior to the transfer day and thereby deeming the dispute to have 'ended'. The Explanatory Notes comment on this potential breach advising that it is unlikely to arise as the CMIC currently has no disputes to be referred.²⁰ The CMIC's Annual Report for 2012-2013 states that no disputes were referred to the committee during that year.²¹

The Explanatory Notes also advise that it is unlikely that a dispute will arise during the period between the introduction of the Bill and the transfer day of the CMIC. However, the Bill provides that if a dispute does arise during the period of the transfer, the dispute will be dealt with pursuant to clause 42 of the Bill and will not be left unresolved.²²

Request for advice:

The committee requested the department's advice as to the basis by which it has been determined 'unlikely that a dispute will arise' during the period between commencement of the Bill and the abolishment of the CMIC.

DAFF'S response:

Clause 8 inserts new section 42 into the Chicken Meat Industry Committee Act 1976. This new section applies to a dispute between a chicken meat grower and a processor about an agreement or proposed agreement. The Department is of the view that it is unlikely that a dispute of this nature will arise between commencement of the Bill and the abolishment of the CMIC. This view is based on the history of disputes between chicken meat growers and processors.

During the period between 2002-03 and 2012-13, the CMIC's Annual Reports state that no disputes relating to agreements or proposed agreements were dealt with by the CMIC. In 2011-12 one issue seeking treatment as a dispute was referred to the CMIC, however it was considered that the CMIC had no jurisdiction over the matter. The CMIC has therefore rarely had disputes regarding agreements or proposed agreements that it had to refer to mediation or arbitration under the unamended Act's sections 23 and 24. The Department understands that there may be commercial disagreements that occur in the collective negotiation process. However, such matters are not normally elevated to the CMIC for mediation or arbitration.

²⁰ CMICA Bill, Explanatory Notes, p.3.

²¹ Chicken Meat Industry Committee *Annual Report, 2012-13*, p.6.

²² CMICA Bill, Explanatory Notes, p.3.

Request for advice:

The committee also sought the department's assurances that in the event a dispute is referred to the CMIC in the period prior to its abolition, that clause 42, as drafted, has sufficient regard for the rights and liberties of individuals (that is, that parties to a dispute will have sufficient opportunity to consider the appointment of an arbitrator prior to transfer day).

DAFF'S response:

Under new section 42 any dispute that arises on or after commencement or a dispute that has not been resolved or referred by commencement, must be referred to an arbitrator by the CMIC. It further provides that the arbitrator can only be appointed with the agreement of the parties to the dispute. If no agreement has been reached by the transfer day the dispute is taken to have ended. As such it is the CMIC that is responsible for referring disputes prior to its abolishment.

It is not possible to predict with certainty when the CMIC will be abolished and whether a dispute requiring referral to an arbitrator pursuant to section 42 will arise prior to that time. However, the intention of section 42 and other relevant provisions in the Bill is to mitigate to the best extent possible infringements on the rights and liberties of individuals involved in a dispute. In the instance where a transfer day has not yet been proposed, the CMIC will be able to take steps to ensure that sufficient time is given to parties to consider the appointment of an arbitrator prior to such a proposal being made. If the Minister is required to determine the transfer day pursuant to new section 32, the need to provide time for the parties to agree to the referral of the dispute could be taken into account.

In the unlikely event that the parties have not agreed to the appointment of an arbitrator by the transfer day there are other mechanisms that parties can utilise for dealing with a dispute. That is, parties may refer the dispute to an arbitrator on their terms outside of the legislation or pursue other legal action. As such, the Department considers that the rights and liberties of parties to a dispute are provided for as far as possible, without impeding the effective operation of the Bill.

Committee comment:

The committee notes and is satisfied by the department's advice.

Appendix A – List of submitters

- 1 Chicken Meat Industry Committee
- 2 Queensland Chicken Growers Association

Appendix B – Briefing officers**Briefing officers at the public briefing held on 5 March 2014**

Ms Melissa Cummins, Acting Director, Legislation and Regulatory Reform, Department of Agriculture, Fisheries and Forestry

Mr John Darlington, Principal Policy Officer, Animal Industries, Department of Agriculture, Fisheries and Forestry

Ms Yessenia Pineda-de Leon, Policy Officer, Legislation and Regulatory Reform, Department of Agriculture, Fisheries and Forestry