

Chicken Meat Industry Committee Amendment Bill 2014

Explanatory Notes

Short title

The short title of the Bill is the *Chicken Meat Industry Committee Amendment Bill 2014*.

Policy objectives and the reasons for them

The policy objectives of this Bill are to abolish the Chicken Meat Industry Committee (the committee) and remove the legislative framework for collective bargaining that is provided under the *Chicken Meat Industry Committee Act 1976* (CMIC Act). The CMIC Act provides a legislative framework, which includes the establishment of the committee, for the stabilisation of the chicken meat industry in Queensland. The stabilisation is given effect through collective bargaining negotiations between chicken meat growers and chicken meat processors that is specifically authorised for the purposes of the *Competition and Consumer Act 2010* (Cth).

The CMIC Act is now considered to be a redundant regulatory burden as the Australian Competition and Consumer Commission (ACCC) has granted an authorisation to the Queensland Chicken Growers Association to enter into collective bargaining negotiations which effectively negates the need for a legislative framework under the CMIC Act.

Achievement of policy objectives

To achieve its objectives, 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 repeal.

Alternative ways of achieving policy objectives

Legislative amendment is the only way in which to achieve the objectives, therefore other options were not considered.

Estimated cost for government implementation

The implementation of this Bill is not anticipated to impose any costs on the Queensland Government. All assets and liabilities of the committee will be transferred to an entity decided by the committee and the Minister.

Consistency with fundamental legislative principles

Issues about consistency with fundamental legislative principles (FLPs) contained in section 4 of the *Legislative Standards Act 1992* (LSA) have been raised in respect of the following:

Legislation should have sufficient regard to rights and liberties of individuals—LSA, section 4(2)(a)

Four potential FLP issues arise in relation to the Bill, and are addressed as follows:

1. Termination of contracts without compensation

The Bill provides that any contract to which the committee is a party immediately before the transfer day, terminates on the transfer day without compensation payable to any person. A potential FLP issue arises in regard to the termination of a contract without compensation.

Under section 12 of the CMIC Act, the committee is required to appoint and at all times have a secretary. At the time of amendment, there is a contract for services between the committee and the Queensland Farmers' Federation (QFF) for the secretarial services provided to the committee and this contract does not provide for recourse to compensation in the event of termination. The contract is directly with QFF as an organisation and QFF receives remuneration for the services, however, the work is performed by the QFF Chief Executive Officer.

Under the Bill, the contract for secretarial services will terminate on the transfer day. The exclusion from compensation is considered to be justified given the nature of the role. The secretarial services are required only where the committee continues to perform and exercise its functions under the CMIC Act. As the committee will be abolished under this Bill after the transfer of the committee's assets and liabilities, there will no longer be a need for secretarial services and the contract will be terminated. The QFF Chief Executive Officer, as an individual, receives no additional remuneration for their role as secretary. As such, the termination of the contract with QFF will not adversely affect the Chief Executive Officer. QFF as an organisation has also advised that it is supportive of the termination of the contract for secretarial services.

2. Termination of office without compensation

The Bill terminates the tenure of office of all committee members after the transfer of the committee's assets and liabilities without recourse to compensation. A potential FLP issue arises in regard to whether the committee members are deprived of office without compensation. In circumstances where members of a statutory body are deprived of office it is usual for Act provisions to specifically provide for compensation or state that compensation can neither be claimed nor paid.

In this instance, exclusion from compensation is considered to be justified on the grounds that the term of office of the members of the committee expired on 20 May 2013. As per section 5(1) of the CMIC Act, following expiration of their appointment and where no successor has been duly appointed, members hold office until the member's successor is duly appointed. Given the repeal of the CMIC Act, it is not intended to appoint any successors. Therefore, it is considered that there is no element of deprivation of office.

Additionally, the exclusion from compensation is considered to be justified given that the membership of the committee is part-time only and members are paid sitting fees and allowances for attendance at meetings. The fees are comparatively low and designed to compensate members for the time absent from normal employment. As committee members will not need to be absent from employment when the board is abolished, it is not considered that compensation is justified.

The termination of the current members' tenure of office on the day of transfer is supported by the chairperson of the committee, who has held the position since May 2003.

3. Referral of unresolved disputes

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 committee. However, the arbitrator must not be appointed without the agreement of the parties to the dispute. Where the parties to a dispute do not agree to the appointment by the transfer day, the dispute is taken to have ended. However, where the parties agree to the appointment, the committee cannot be ordered to pay the costs, or part of the costs, of the arbitration. This raises two potential FLP issues.

The first potential FLP issue could be raised in the situation where parties must meet additional costs for the arbitration of their dispute due to the referral. It is considered that this potential FLP is unlikely to arise because the committee currently has no disputes to be referred. It is also unlikely that a dispute will arise during the period between the introduction of the Bill into the Legislative Assembly and its commencement.

Also, the risk of this potential FLP is considered to be outweighed by the nature of the committee's role in dispute resolution under the CMIC Act. The committee's role is limited to the referral of disputes to a third party. This is what is also provided for under the Bill.

Under section 23 of the CMIC Act, if a dispute arises between a grower and a processor about an agreement, or a proposed agreement, the committee must refer the dispute to mediation where the dispute is not resolved within 90 days after it arose or if asked by the parties. Further, section 24 of the CMIC Act provides that in a situation where the dispute is about an amount payable under the agreement and the dispute has not been resolved according to section 23, the chairperson of the committee must then refer the dispute to an arbitrator. In this situation, as with the new provision under the Bill, the committee cannot be ordered to pay the costs or part of the costs of the arbitration.

The second potential FLP issue could be raised in the situation where parties are not afforded sufficient time to properly consider whether to agree to the appointment of the arbitrator prior to the transfer day. It is considered that this FLP issue is unlikely to arise given that the committee currently does not have any disputes to be referred and it is unlikely that a dispute will arise during the period between the introduction of the Bill into the Legislative Assembly and the transfer day of the committee.

Also, the intention of the amendment is to ensure that in the unlikely event of a dispute arising during the period before transfer, such dispute can be dealt with under the Bill and will not be left unresolved. On balance, it is considered that providing for the referral of such

a dispute outweighs the unlikely event of a dispute being referred immediately before the transfer day.

Consultation

The Bill has been developed in consultation with the committee.

The Office of Best Practice Regulation, within the Queensland Competition Authority, has been consulted regarding the need for a Regulatory Impact Statement (RIS).

The Department of the Premier and Cabinet, the Department of Justice and Attorney-General, Queensland Treasury and Trade, Office of the Queensland Parliamentary Counsel, and the Department of Science, Information Technology, Innovation and Arts (Queensland State Archives) have been consulted.

Consistency with legislation of other jurisdictions

The Bill is consistent with the trend across a number of jurisdictions to move away from the use of state based legislative collective negotiations for chicken meat growers and towards the authorisation of collective negotiation arrangements by the ACCC. In South Australia and Western Australia chicken meat industry stabilisation legislation has been repealed and let expire respectively.

Victoria and New South Wales have chicken meat industry legislation. However, in New South Wales a review considering the need to continue government intervention and support through the *Poultry Meat Industry Act 1986* (NSW) is currently underway.

In Victoria, South Australia, Tasmania and Western Australia the chicken meat industry uses the ACCC authorisation process for approval for their collective negotiations arrangements. Tasmania, the Northern Territory and the Australian Capital Territory have never had chicken meat industry legislation.

Notes on provisions

Clause 1 provides that the Bill when enacted will be cited as the *Chicken Meat Industry Committee Amendment Act 2014*.

Clause 2 provides that the Act amends the *Chicken Meat Industry Committee Act 1976*.

Clause 3 amends section 2 (Definitions) to include new definitions.

Clause 4 replaces the heading of part 3 (Agreements and dispute resolution) with a new heading, 'Part 3 (Agreements)'.

Clause 5 omits the heading of part 3, division 1 (Agreements).

Clause 6 omits part 3, division 2 (Dispute resolution) which contains provisions for the mediation and arbitration of disputes. These provisions are being omitted as they are considered to be redundant in light of the transitional provisions on disputes provided under this Bill, and to avoid the possibility of any interpretive inconsistency between the relevant provisions.

Clause 7 omits part 3A (Registration of agreements and annual fees) as provisions enabling the registration of agreements and requiring the payment of annual fees are no longer required.

Clause 8 inserts three new parts into the Act, namely new part 5, new part 6 and new part 7.

New part 5 (Abolition of the committee) contains 13 new sections grouped into five new Divisions:

1. Division 1 (Preliminary), comprising new section 27.
2. Division 2 (Decisions about transfer and abolition), comprising new sections 28 to 32.
3. Division 3 (Transfer), comprising new sections 33 to 35.
4. Division 4 (Abolition), comprising new section 36.
5. Division 5 (Miscellaneous), comprising new sections 37 to 39.

New part 6 (Transitional provisions for Chicken Meat Industry Committee Amendment Act 2014), comprising new sections 40 to 43.

New part 7 (Repeal of Act) comprising new section 44.

Part 5 – Abolition of the committee

New section 27 (Definitions for pt 5) inserts the definitions for part 5.

New section 28 (Committee's decision about proposed transfer) provides that the committee must decide to transfer its assets and liabilities to an eligible entity as provided for in section 29(1) and abolish itself. It further provides that the committee must decide the day on which it proposes to transfer its assets and liabilities (the proposed transfer day) and the eligible entity to which it proposes to transfer its assets and liabilities (the proposed transferee).

New section 29 (Eligible entity) stipulates the conditions that must be satisfied in order for an entity to be considered an eligible entity. An entity is only an eligible entity if it is an incorporated association, or a public company without share capital, or a non-trading cooperative. The entity cannot be an industrial association and its constitution or rules must be consistent with the entity promoting the interests of the chicken meat industry in Queensland. The entity must also agree to the transfer by notice to the committee signed by an authorised person for the entity.

New section 30 (Notice of committee's decision about proposed transfer) requires that the committee give the Minister notice (the committee notice) of its decision under section 28 to transfer its assets and liabilities and abolish itself. The section specifies the details that must be provided in such notice, including details of the proposed transfer day and that the committee is satisfied the proposed transferee is an eligible entity.

New section 31 (Minister's decision about committee notice) provides that the Minister must consider the committee notice and approve or refuse to approve the proposed transfer. If the Minister considers that all requirements for this division of the Act have been complied with, the Minister is obligated to give the committee a notice approving the proposed transfer (an approval notice). The Minister must also declare the transfer day and transferee by gazette notice. Conversely, if the Minister does not consider that all requirements for this division of the Act have been complied with for the proposed transfer, the Minister must either give the committee a written direction about compliance with the requirements or give the committee a notice refusing the proposed transfer and giving reasons for the refusal. These reasons must be in relation to this division of the Act not being complied with. Any written direction given to the committee under this section must be complied with, in accordance with the timeframes set in the direction.

New section 32 (Minister's decision if no approval notice given) applies from the day that is six months after the amending Act's commencement, if the Minister has not given the committee an approval notice, and the Minister is not considering a committee notice, and the Minister has not given the committee a written direction under section 31(3)(a) for which the time for compliance has not expired. If these circumstances are satisfied, the Minister must decide the day on which the committee's assets and liabilities will be transferred, decide the eligible entity to receive the committee's assets and liabilities, and declare the transfer day and transferee by gazette notice.

New section 33 (Transfer of assets and liabilities) provides that the committee's assets and liabilities are transferred to, and become the assets and liabilities of, the transferee. However, if there is an unpaid annual fee (which has been prescribed under section 24D(2)(b) of the pre-amended CMIC Act) on the transfer day, the unpaid annual fee is taken to not be an asset of the committee and must be written off by the chairperson of the committee.

New section 34 (Transferee does not represent the State) provides that the transferee receiving the assets and liabilities of the committee does not represent the State and cannot make the State liable for the debts and obligations of the transferee or any other person.

New section 35 (Evidence and registration of transferred assets) provides for the registration of the transferred assets and liabilities by the transferee. Evidence of the transfer of assets to the transferee is to be in the form of a certificate signed by an authorised person for the transferee. This certificate must identify the asset, state that prior to the transfer day it had

been an asset of the committee and state that the asset has become an asset of the transferee on the transfer day. Any entity with asset registration functions under a law of the State must register the matter if it receives such a certificate. Similarly, the transfer of the asset may be registered under the law of another State or the Commonwealth if the relevant entity receives the certificate and is permitted by law to give effect to such registration.

New section 36 (Abolition of committee) provides that the committee is abolished immediately after the transfer of its assets and liabilities to the transferee pursuant to section 33(1). It furthermore terminates the membership of the committee at this time, with no recourse to compensation.

New section 37 (Ending of contracts) provides that any contract to which the committee is a party immediately before the transfer day ends on the transfer day and no compensation is payable to a person in relation to a contract ending under this provision.

New section 38 (Records) provides that each record of the committee, other than a public record as provided under the *Public Records Act 2002*, is to be transferred to the department on the transfer day. The public records of the committee are to be dealt with under section 8 of the *Public Records Act 2002*.

New section 39 (Saving of operation) provides that part 5 of the Act is declared to be a law to which the *Acts Interpretation Act 1954*, section 20A applies.

Part 6 – Transitional provisions for Chicken Meat Industry Committee Amendment Act 2014

New section 40 (Existing agreements) provides that any agreement in force immediately before the repeal of the CMIC Act, whether or not the agreement was registered under section 24C of the pre-amended CMIC Act immediately before it was repealed, remains in force after the repeal until it is terminated or otherwise ends.

New section 41 (Registration applications) applies, if before the commencement of the amendment Act, a processor had made an application under section 24B of the pre-amended CMIC Act to register an agreement and the agreement has not been registered on commencement. In this situation, the application lapses on the commencement and the processor is to be notified of the lapsing by the committee and the application fee is to be reimbursed to the processor.

New section 42 (Unresolved disputes must be referred to arbitrator) applies where a dispute arises on or after the amendment Act's commencement, or a dispute arose before commencement and it has not been resolved by the parties, nor resolved by mediation under section 23 of the pre-amended CMIC Act, nor referred to arbitration under section 24 of the pre-amended CMIC Act by the commencement. In this situation, the committee must refer the dispute to an arbitrator appointed by the committee. However, the arbitrator must not be appointed without the agreement of the parties to the dispute. If the parties do not agree to the appointment by the transfer day the dispute is taken to have ended. Where the parties agree to the appointment, the *Commercial Arbitration Act 2013* applies to the arbitration. However, the committee cannot be ordered to pay the costs, or part of the costs, of the arbitration.

New section 43 (Application of pt 6) provides that part 6 of the Act is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

Part 7 – Repeal of Act

New section 44 (Repeal) provides that the CMIC Act is repealed immediately after the transfer day.

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