

Version No. 025
Broiler Chicken Industry Act 1978
No. 9199 of 1978

Version incorporating amendments as at
14 March 2013

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Version No. 025

Broiler Chicken Industry Act 1978

No. 9199 of 1978

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14 March 2013

An Act to establish a Victorian Broiler Industry Negotiation Committee and to improve Stability in the Broiler Chicken Industry, and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1 Short title and commencement

- (1) This Act may be cited as the **Broiler Chicken Industry Act 1978**.
- (2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

* * * * *

S. 1(3)
repealed by
No. 11/1987
s. 29.

PART I—INTERPRETATIONS

2 Definitions

In this Act, unless inconsistent with the context or subject-matter—

broiler chicken means a chicken which is being or has been grown under intensive housing conditions specifically for consumption as poultry meat after processing;

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chicken means a fowl of the genus *Gallus* which is not more than sixteen weeks old;

Committee means Victorian Broiler Industry Negotiation Committee;

contract means contract between a processor and a grower made pursuant to this Act;

Department Head means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department of Primary Industries;

S. 2 def. of *Department Head* inserted by No. 76/1998 s. 19(a)(ii), amended by Nos 56/2003 s. 11(Sch. item 4.1), 108/2004 s. 117(1) (Sch. 3 item 20).

S. 2 def. of *Director-General* repealed by No. 46/1998 s. 7(Sch. 1).

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grower means a person who grows chickens in order that the chickens so grown will be sold or otherwise supplied in batches of not less than 500 chickens to a processor as broiler chickens;

prescribed means prescribed by regulations made pursuant to this Act;

price means price, growing fee or other remuneration paid by a processor to a grower pursuant to a contract;

processing with respect to broiler chickens, means killing and preparing the chickens for sale for consumption as poultry meat;

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processor means a person who receives or purchases broiler chickens for processing, and includes a person who receives or purchases broiler chickens from a grower for sale to another person for ultimate processing.

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S. 2 def. of *Secretary* inserted by No. 46/1998 s. 7(Sch. 1), repealed by No. 76/1998 s. 19(a)(i).

**PART II—VICTORIAN BROILER INDUSTRY
NEGOTIATION COMMITTEE**

3 Victorian Broiler Industry Negotiation Committee¹

- (1) For the purposes of this Act there shall be constituted as hereinafter provided a Committee to be called the Victorian Broiler Industry Negotiation Committee.
- (2) The Committee is to consist of 11 members appointed by the Minister, of whom—
 - (a) one member, who is not a representative of processors or growers, is to be the chairperson; and
 - (b) four members are to be appointed from a panel or panels of persons submitted by the body or bodies, which, in the Minister's opinion, represent the interests of processors; and
 - (c) four members are to be appointed from a panel or panels of persons submitted by the body or bodies which, in the Minister's opinion, represent the interests of growers; and
 - (d) two members, who are not representatives of processors or growers, are to be persons who, in the Minister's opinion, have commercial expertise.
- (3) For the purposes of subsection (2)(b) or (c) the Minister—
 - (a) must specify the number of persons that are to make up the panel; and
 - (b) may ask a body to nominate a specified number of persons to take part in a panel.

S. 3(2)
substituted by
No. 29/1991
s. 4.

S. 3(3)
substituted by
No. 29/1991
s. 4.

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- (4) If the body does not nominate the specified number of persons within one month of being asked to do so by the Minister, the Minister may appoint persons whom he or she considers suitable to represent the relevant interests. **S. 3(4) substituted by No. 29/1991 s. 4.**
- (5) The Minister may appoint a member who is not a representative of processors or growers to be an alternative chairperson. **S. 3(5) substituted by No. 29/1991 s. 4.**
- (6) The alternative chairperson is to be chairperson if the chairperson is absent and the alternative chairperson has all the powers, authorities and duties of the chairperson while he or she is acting in the place of the chairperson. **S. 3(6) substituted by No. 29/1991 s. 4.**

4 Temporary members

- (1) Where through illness or any other cause a member appointed under section 3(2)(b) or (c) is aware that he will not be able to attend a meeting or that for a specified or unspecified period of time he will not be able to attend meetings, he may, in writing to the chairperson, nominate a temporary member to act in his place at the meeting or until the end of the specified period or until he revokes that nomination in writing. **S. 4(1) amended by No. 29/1991 ss 5, 9(1).**
- (2) On receiving a written nomination referred to in subsection (1) the chairperson may in his discretion accept or reject the person so nominated as a temporary member. **S. 4(2) amended by No. 29/1991 s. 9(1).**
- (3) The body which supplied the name of the absent member to the Minister as its representative may at any time supply to the Minister the name of a person as its representative to act as a temporary member during the absence of the member, and if a name is so supplied the person so named shall, notwithstanding that another person may have been accepted as the temporary member on the

s. 5

nomination of the absent member, be the temporary member during that absence.

- (4) A temporary member shall, while he acts as such, have all the powers authorities and duties of a member.

S. 5
substituted by
No. 29/1991
s. 6.

5 Department Head

S. 5(1)
amended by
Nos 46/1998
s. 7(Sch. 1),
76/1998
s. 19(b),
56/2003
s. 11(Sch.
item 4.2).

- (1) The Minister may, upon the nomination of the Department Head, appoint an employee in the Department of Primary Industries to be secretary of the Committee.

S. 5(2)
amended by
Nos 46/1998
s. 7(Sch. 1),
76/1998
s. 19(b),
56/2003
s. 11(Sch.
item 4.2).

- (2) If the secretary is unable to be present at a meeting, the Department Head may nominate an employee in the Department of Primary Industries to act as secretary for that meeting and while so acting the employee has all the powers authorities and duties of the secretary.

6 Meetings etc.

S. 6(1)
amended by
No. 29/1991
s. 9(1).

- (1) The Committee shall meet at least twice in every year ending on the 31st day of December, and shall meet at any time if so requested by the Minister, by the chairperson, or by three or more members.

S. 6(1A)
inserted by
No. 29/1991
s. 7(a).

- (1A) The chairperson must give each member at least 14 days notice in writing of the time of a meeting.

S. 6(2)
substituted by
No. 29/1991
s. 7(b).

- (2) The quorum of a meeting is to be seven persons consisting of the chairperson and 6 other members.

- (3) A question arising at a meeting is to be determined by a majority of the members present at the meeting and eligible to vote on that question.
- (4) Subject to this Act the Committee shall regulate its own proceedings.

S. 6(3)
substituted by
No. 29/1991
s. 7(c).

7 Period of appointment

- (1) A member of the Committee shall, subject to this Act, be appointed for a term not exceeding two years and, if otherwise qualified, shall in like manner be eligible for re-appointment from time to time for terms not exceeding two years.
- (2) On the occurrence of a vacancy in the office of a member the Minister may appoint a qualified person to hold office for the balance of his predecessor's term of office.
- (3) The Minister may at any time cancel the appointment of a member, and on such cancellation the person shall cease to be a member.
- (4) An act or decision of the Committee is not invalid by reason only of a vacancy in the office of or a defect or irregularity in the appointment of a member.

8 Committee may co-opt

The Committee may request any person for advice on any matter, and a person so requested may attend and speak at a meeting but shall not vote on any matter arising at that meeting.

8A Objectives of Committee

The Committee's objectives are—

- (a) to create an environment and develop processes that facilitate agreements between growers and processors; and

S. 8A
inserted by
No. 35/1988
s. 13.

- (b) to determine prices and recommend terms and conditions that would apply under fair and competitive market conditions; and
- (c) to ensure that exploitation of growers does not occur.

9 Functions of Committee

- (1) The functions of the Committee shall be—
 - (a) to make recommendations to the Minister with respect to the terms and conditions which should or should not be included in contracts generally or in any class of contract or in a particular contract;
 - (b) to determine disputes between processors and growers with respect to any matters relating to the broiler chicken industry (including disputes as to the assessment of any amount payable under a contract);
 - (c) to carry out the functions it is required to carry out under this Act; and
 - (d) to report to the Minister on any matter relating to the broiler chicken industry referred to it by the Minister or on any matter which it considers necessary.
- (2) Without affecting the generality of paragraph (a) of subsection (1) the Committee shall in particular make recommendations to the Minister with regard to the inclusion in contracts of matters providing for—
 - (a) the duration and option of renewal of the contract between processors and efficient growers, including the varying rights of the parties according to the manner in which they have performed the contract; and

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- (b) the participation of efficient growers in the benefits of any growth expansion of a processor's output.
- (3) In this section an *efficient grower* means a grower who meets the criteria for an *efficient grower* determined from time to time by the Committee, and *efficiency* in relation to a grower has, subject to subsection (4), a corresponding meaning.
- (4) In determining efficiency in relation to a grower and in determining who is an efficient grower no regard shall be had to any failure of a grower to qualify as an efficient grower due to the quality of the chickens or the feed, to disease or to any other cause whatsoever which is beyond the control of the grower.

10 Committee to determine the standard price

- (1) The Committee may determine—
- (a) the price which is to be the standard price for broiler chickens to be paid throughout the broiler chicken industry by processors to growers with whom contracts have been entered into;
- (b) the circumstances under which the standard price may be varied; and
- (c) the limits within which the price may be so varied in any stated circumstances.
- (2) The chairperson shall notify the Minister in writing of any determination made pursuant to subsection (1).

S. 10(2)
amended by
No. 29/1991
s. 9(1).

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- (3) A processor shall not pay a grower less than or more than the standard price for broiler chickens or, where there are circumstances which permit variation of that price, less than or more than the price permitted having regard to the variation.
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PART III—GENERAL

11 Determination of Committee to be binding on processors and growers

A determination of the Committee with respect to any matter which it is empowered to determine shall be binding on all processors and growers.

12 Contracts

(1) Subject to this Act—

- (a) a processor shall not receive or purchase broiler chickens for processing from a grower; and
- (b) a grower shall not sell or otherwise supply broiler chickens for processing to a processor—

except in accordance with the terms of a contract signed by both parties.

(2) A contract—

- (a) shall contain the prescribed terms and conditions or terms and conditions to the like effect;
- (b) may contain other terms and conditions not inconsistent with the prescribed terms and conditions or with the term implied pursuant to subsection (3);
- (c) shall be in the form prescribed as applicable to the case or in a form to the like effect.

(3) It shall be an implied term of a contract that the price payable for any broiler chickens shall be the appropriate price determined by the Committee pursuant to section 10 or by the arbitrator pursuant to section 13.

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- (4) A provision in a contract which conflicts with varies or modifies the prescribed terms and conditions or the implied term referred to in subsection (3) shall be void and of no effect.
- (5) A copy of the contract shall forthwith after it has been signed by both parties be sent by the processor to the Committee.
- (6) This section shall not apply in a case where the Committee grants an exemption on the ground that the processor and the grower are the same person.

S. 12(5)
amended by
No. 29/1991
s. 9(2)(a).

13 Disputes to be placed before the Committee

- (1) Where there is a dispute between the processor and the grower with regard to any term or condition of the contract (including a dispute as to the price to be paid by the processor) the matter in dispute shall, on the application of either party addressed to the Committee, be placed before the Committee for settlement by negotiation.
- (2) Where the Committee is unable to determine—
 - (a) the standard price to be paid throughout the broiler chicken industry by processors to growers for broiler chickens or any permitted variation of that price; or
 - (b) a dispute of a type referred to in section 9(1)(b) or in subsection (1) of this section—
the chairperson shall report that fact to the Minister who may refer the matter to a single arbitrator, and the **Commercial Arbitration Act 2011** applies to the arbitration.
- (3) Where the arbitrator makes a decision with respect to a dispute he shall forthwith in writing—
 - (a) inform the Minister of his decision and the date from which it operates; and

S. 13(1)
amended by
No. 29/1991
s. 9(2)(b)(i).

S. 13(2)
amended by
Nos 11/1987
s. 30(1),
29/1991
s. 9(1),
50/2011
s. 46(Sch.
item 2).

(b) send a copy of the information referred to in paragraph (a) to the Committee.

S. 13(3)(b)
amended by
No. 29/1991
s. 9(2)(b)(ii).

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S. 13(4)(5)
repealed by
No. 11/1987
s. 30(2).

14 Penalty

Any person who contravenes or fails to comply with any of the provisions of this Act shall be guilty of an offence against this Act.

S. 14
amended by
No. 29/1991
s. 8.

Penalty: First offence, 10 penalty units, Second offence, 25 penalty units, Third offence and any subsequent offence, 50 penalty units.

15 Act not to interfere etc. with other remedies

Nothing in this Act and no proceeding taken under this Act shall in any way interfere with or affect any right or remedy by civil process to which any person may be entitled otherwise than under this Act.

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S. 16
amended by
No. 16/1986
s. 30,
repealed by
No. 57/1989
s. 3(Sch.
item 13).

17 Offences by bodies corporate

(1) Where a body corporate commits an offence against this Act—

(a) the body corporate;

(b) the individual responsible for the act or omission constituting the offence—

S. 17(1)(b)
amended by
No. 13/2013
s. 52(1).

s. 17A

S. 17(1)(c)
repealed by
No. 13/2013
s. 52(2).

* * * * *

shall each be guilty of the offence and liable to a penalty accordingly.

- (2) If two or more persons are jointly responsible for the same offence, each of those persons shall be guilty of the offence, and the liability of each of them shall be independent of the liability of the other or others.

S. 17A
inserted by
No. 35/1988
s. 14 (as
amended by
No. 8/1989
s. 10(3)).

17A Annual report

- (1) In this section, *financial year* means each 12 month period fixed by the Minister.
- (2) The Committee must—
- (a) in respect of each financial year, prepare a report of its operations during the financial year; and
 - (b) submit the report to the Minister not later than—
 - (i) 3 months after the end of the financial year; or
 - (ii) any later date approved by the Minister.
- (3) The report must—
- (a) be prepared in a form and contain information determined to be appropriate by the Committee; and
 - (b) contain any further information required by the Minister.
- (4) The Minister must cause a report to be laid before the Legislative Council and the Legislative Assembly before the end of the seventh sitting day of the Council or the Assembly after the report is received by the Minister.

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- (5) If the Committee fails to submit a report by 3 months after the end of the financial year, or the later date approved by the Minister, the Minister must report the failure and the reason for it, or must cause them to be reported, to each House of Parliament.

18 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) prescribing the terms and conditions which are to be inserted into contracts;
 - (b) prescribing, where the Governor in Council deems it necessary or expedient alternative terms or conditions in relation to any matter or thing, one of which alternatives is to be selected by the parties as the prescribed term or condition to be inserted into the contract;
 - (c) requiring processors to send to the Committee audited statements or statutory declarations from time to time with regard to the price paid or payable to growers for broiler chickens; and
 - (d) any matter or thing required to be prescribed or necessary to be prescribed for the purposes of this Act.
- (2) Regulations made pursuant to paragraph (c) of subsection (1) may be made to apply to all processors or processors of a specified class or a specified processor.

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s. 18

(3) The Governor in Council may prescribe different terms and conditions to relate to different specified circumstances.

S. 19
repealed by
No. 29/1991
s. 10.

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ENDNOTES

1. General Information

The **Broiler Chicken Industry Act 1978**, No. 9199/1978 was assented to on 5 December 1978 and came into operation on 27 November 1979: Government Gazette 27 November 1979 page 3705.

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Broiler Chicken Industry Act 1978** by Acts and subordinate instruments.

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: Ss 1–11, 13–27, 29–34 on 1.7.86: Government Gazette 25.6.86 p. 2180; s. 28 on 1.9.86: Government Gazette 27.8.86 p. 3201; s. 12 on 1.1.88: Government Gazette 7.10.87 p. 2701
Current State: All of Act in operation

Agricultural Acts (Amendment) Act 1987, No. 11/1987

Assent Date: 5.5.87
Commencement Date: Pts 1, 4, 6 on 6.5.87: Government Gazette 6.5.87 p. 1004; Pt 3 on 1.7.87: Government Gazette 1.7.87 p. 1758; Pt 5 on 16.12.87: Government Gazette 16.12.87 p. 3392; Pt 2 on 30.3.88: Government Gazette 30.3.88 p. 753
Current State: All of Act in operation

Agricultural Acts (Amendment) Act 1988, No. 35/1988 (as amended by No. 8/1989)

Assent Date: 24.5.88
Commencement Date: S. 13 on 1.6.88: Government Gazette 1.6.88 p. 1486; s. 14 on 22.3.89: Government Gazette 15.3.89 p. 589
Current State: This information relates only to the provision/s amending the **Broiler Chicken Industry Act 1978**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Broiler Chicken Industry (Amendment) Act 1991, No. 29/1991

Assent Date: 12.6.91
Commencement Date: 1.7.91: Government Gazette 26.6.91 p. 1659
Current State: All of Act in operation

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Broiler Chicken Industry Act 1978**

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**Conservation, Forests and Lands (Miscellaneous Amendments) Act 1998,
No. 76/1998**

Assent Date: 10.11.98
Commencement Date: S. 19 on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Broiler Chicken Industry Act 1978**

Fisheries (Amendment) Act 2003, No. 56/2003

Assent Date: 16.6.03
Commencement Date: S. 11(Sch. item 4) on 17.6.03: s. 2
Current State: This information relates only to the provision/s
amending the **Broiler Chicken Industry Act 1978**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 20) on 5.4.05: Government
Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s
amending the **Broiler Chicken Industry Act 1978**

Commercial Arbitration Act 2011, No. 50/2011

Assent Date: 18.10.11
Commencement Date: S. 46(Sch. item 2) on 17.11.11: Special Gazette
(No. 369) 15.11.11 p. 1
Current State: This information relates only to the provision/s
amending the **Broiler Chicken Industry Act 1978**

Statute Law Amendment (Directors' Liability) Act 2013, No. 13/2013

Assent Date: 13.3.13
Commencement Date: S. 52 on 14.3.13: s. 2
Current State: This information relates only to the provision/s
amending the **Broiler Chicken Industry Act 1978**

3. Explanatory Details

¹ S. 3: Section 11 of the **Broiler Chicken Industry (Amendment) Act 1991**, No. 29/1991 reads as follows:

11 Transitional provision

- (1) On the commencement of this section—
- (a) the new Committee is the successor in law of the former Committee; and
 - (b) the former Committee is abolished and its members go out of office; and
 - (c) any reference to the former Committee in—
 - (i) any Act other than this Act; or
 - (ii) any subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**; or
 - (iii) any other document—is to be taken to be a reference to the new Committee, in so far as it relates to any period on or after the commencement of this section and it is not inconsistent with the context or subject-matter; and
 - (d) any determination or exemption made by the former Committee which is in force, remains in force as if it were a determination or exemption of the new Committee and may be revoked or amended by the new Committee.

- (2) In this section—

former Committee means the Victorian Broiler Industry Negotiation Committee established under section 3 of the Principal Act immediately before the commencement of section 4 of this Act;

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new Committee means the Victorian Broiler Industry Negotiation Committee established under section 3 of the Principal Act on and after the commencement of section 4 of this Act.