CHICKEN MEAT INDUSTRY BILL

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries) obtained leave and introduced a bill for an act to provide for the stabilisation of the chicken meat industry; to repeal the Poultry Meat Industry Act 1969; and for other purposes. Read a first time.

The Hon. P. HOLLOWAY: I move:

That this bill be now read a second time.

This bill repeals the Poultry Meat Industry Act 1969 and replaces it with a modern, more pro-competitive, regulatory scheme that will enable owner-farmers in the chicken meat industry to engage in collective negotiations with chicken meat processors supported by compulsory mediation and arbitration at the request of either party. The bill will also provide efficient farmers with a greater degree of security than under the present deregulated environment and, further, provides an exemption for the collectively negotiated agreements from the operation of the restrictive trade practices rules in Part IV of the commonwealth's Trade

Practices Act 1974 and in the Competition Code that applies in South Australia by authority of the Competition Policy Reform (South Australia) Act 1996.

Before describing the scheme proposed by the bill and addressing the structural adjustment issues facing the chicken meat industry, and the political issues arising from the introduction of the bill, I will first traverse the history of legislation in this industry. Beginning in 1969 with the Poultry Meat Industry Act, there has been a long history of legislative intervention in the chicken meat industry. The basis of this intervention has been concern at the significant imbalance in bargaining power between growers and processors and, consequently, the power imbalance in the contractual and other ongoing relationships between those two sectors of the industry.

This imbalance in bargaining power exists because processors are able to obtain significant market power at the processor-grower functional level of the market through the strength they obtain through vertical integration and because there is no auction market for meat chickens. On the other hand, the growing sector of the industry is characterised both by a requirement for significant infrastructure investment and by sunk costs.

The nature of the industry is that growers are essentially 'tied' to a particular processor; that is, because of structural factors, biosecurity concerns and commercial factors in this industry, growers have traditionally had an exclusive relationship with one processor. A grower does not own any birds but simply agists the birds owned by the processor. A grower must be geographically located no further than two hours' drive from the processing works, or else the bird-loss factor becomes significant. Further, growers cannot use their sheds for any other types of animal husbandry, and the last five-year period has seen a significant decline in the sale price and demand for chicken farms, making it very difficult for growers to sell their farms and exit the industry.

There have been several attempts by various governments to provide an appropriate response to this imbalance in bargaining power and the related issues in this industry, with significant amendments to the 1969 act in 1976 and, a decade later, in 1986. The 1969 act (together with its amendments) was essentially a model law that was in force in all Australian states that had a chicken processing industry. This model forms the basis for legislation still in force in New South Wales and in Western Australia. Victoria has a similar act, but has stayed its operation for a period of at least three years. Queensland has a more recent scheme; one that formed the starting point for the proposed South Australian bill.

In 1987, following a dispute concerning entry into the South Australian industry by a new grower, the then minister for agriculture requested a review of the 1969 act. Green and white papers were released for comment in 1991 and 1994 respectively. The outcome of this process was a decision by the then South Australian government to repeal that act in 1996. However, the government of the day did not proceed with the repeal when, reacting to grower concerns at their exposure to the bargaining power of the processors, the Labor Party in opposition and independent MLCs signalled their intention to oppose the bill. In July 1997, the then minister convened a meeting of industry and parliamentary representatives, thus commencing a process to address growers' concerns that culminated in the bill before the house today. Since the mid-1990s, there have also been competition law and policy issues that have had an impact on the 1969 act. The Poultry Meat Industry Committee ceased to function from about 1996 and, since then, the 1969 act has essentially been moribund.

The main reason why the committee ceased to function was that, since the competition code commenced to apply to its members as individuals who were also industry participants and competitors, those members would have been at risk of contravening the restrictive trade practices rules in the competition code. Those rules have the same effect as the restrictive trade practices rules in part IV of the commonwealth's Trade Practices Act 1974, except that the Trade Practices Act itself is essentially restricted to trading and financial corporations.

Further, the South Australian government is obliged to conduct a legislation review of the 1969 act under clause 5 of the competition principles agreement, which is one of the national competition policy inter-governmental agreements. There are several elements in the 1969 act which are not considered capable of passing the scrutiny of the National Competition Council which assesses the states' compliance for the purpose of obtaining competition payments. Those elements are the function of the committee to 'approve' new farms and growing contracts, and the requirement that no new grower entrants will be allowed if there is spare capacity amongst existing growers.

Since 1997, the major processors have engaged in collective negotiations with growers under an authorisation from the Australian Competition and Consumer Commission (ACCC) pursuant to part VII of the Trade Practices Act. Steggles Enterprises Limited (now Bartter Enterprises Pty Ltd) has now ceased processing in South Australia, but Inghams Enterprises Pty Ltd has sought an extension of that authorisation for a further five years.

As part of the development of the scheme proposed by the bill, the Department of Primary Industries and Resources has undertaken a broad program of consultations with all industry parties. A consultation paper and consultation draft of the bill were made available for some 11 weeks. Ministerial meetings took place with both grower and processor industry leaders on several occasions, and departmental officers also had several meetings with them. There has been a continual flow of correspondence and submissions from both processors and growers, even after the formal consultation period ended, and that correspondence continues.

These consultations were part of the national competition policy legislation review that was completed prior to the introduction of this bill into parliament. The review concluded that there was a net public benefit from the bill. The review considered that there was little opportunity for either growers or processors to pass on costs to end consumers—

- because of competition between processors; and
- because of competition in South Australia from chilled and frozen product imported from other states; and
- because chicken products compete with other white and red meat products and with fish at the retail level.

Given that growers and processors are mutually dependent, both have a vital interest in maintaining the efficiency and price competitiveness of the industry.

While the government is committed to the introduction of this bill, it will consider all reasonable submissions and propose amendments to the bill prior to passage if it believes that any such amendment is needed to advance the objectives of the bill or to assist the practical operation of the scheme.

Growers who fall within the ACCC authorisation have indicated that, while they are able to engage in collective negotiations with Inghams, in reality they have little leverage.

This clause deals with matters relating to the Board's procedures such as the quorum at meetings, the chairing of meetings, voting rights, the holding of conferences by telephone and other electronic means and the keeping of minutes.

Clause 18: Disclosure of interest

This clause requires members of the Board to disclose direct or indirect pecuniary or personal interests in matters under consideration and prohibits participation in any deliberations or decision of the Board on those matters. A maximum penalty of $10 000 is fixed for contravention or non-compliance.

Clause 19: Powers in relation to witnesses, etc.

This clause sets out the powers of the Board to summons witnesses and require the production of documents and other evidence in proceedings before the Board.

Clause 20: Power to require medical examination or report

This clause empowers the Board to require a veterinary surgeon or person applying for registration or reinstatement of registration as a veterinary surgeon to submit to an examination by a health professional or provide a medical report from a health professional, including an examination or report that will require the person to undergo a medically invasive procedure. If the person fails to comply, the Board can suspend the person's registration until further order.

Clause 21: Principles governing proceedings

This clause provides that the Board is not bound by the rules of evidence and requires it to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

Clause 22: Representation at proceedings

This clause entitles a party to proceedings before the Board to be represented at the hearing of those proceedings.

Clause 23: Costs

This clause empowers the Board to award costs against a party to proceedings before the Board.

DIVISION 6—ACCOUNTS, AUDIT AND ANNUAL REPORT

Clause 24: Accounts and audit

This clause requires the Board to keep proper accounting records in relation to its financial affairs, to have annual statements of account prepared in respect of each financial year and to have the accounts audited annually by an auditor approved by the Auditor-General and appointed by the Board.

Clause 25: Annual report

This clause requires the Board to prepare an annual report for the Minister and requires the Minister to table the report in Parliament.

PART 3

REGISTRATION OF VETERINARY SURGEONS

DIVISION 1—REGISTERS

Clause 26: Registers

This clause requires the Registrar to keep a general register, a specialist register and a register of persons whose names have been removed from a register and have not been reinstated.

Clause 27: Authority conferred by registration on general or specialist register

This clause sets out the kind of veterinary treatment that registration on the general or specialist register authorises a registered person to provide.

Clause 28: General and specialist registers

Clause 29: Register of persons removed from general or specialist register

These clauses set out the information to be included on each register.

Clause 30: Provisions of general application to registers

This clause requires the registers of registered persons to be kept available for inspection by the public and permits access to be made available by electronic means (such as the Internet). It also contains provisions relevant to the maintenance of the registers.

Clause 31: Requirement to inform Board of changes

This clause requires registered persons to notify a change of address within 3 months. A maximum penalty of $250 is fixed for non-compliance.

DIVISION 2—REGISTRATION

Clause 32: Registration of natural persons on general or specialist register

This clause provides for the full and limited registration of natural persons as veterinary surgeons in general practice or specialties.

Clause 33: Application for registration

This clause deals with applications for registration. It empowers the Board to require applicants to submit medical reports or other evidence of medical fitness to provide veterinary treatment or to obtain additional qualifications or experience before determining an application.

Clause 34: Removal from register or specialty

This clause requires the Registrar to remove a person's name from a register on application by the person or in certain specified circumstances (for example, suspension or cancellation of the person's registration under this measure).

Clause 35: Reinstatement on register or in specialty

This clause makes provision for reinstatement of a person's name on a register. It empowers the Board to require applicants for reinstatement to submit medical reports or other evidence of medical fitness to provide veterinary treatment or to obtain additional qualifications or experience before determining an application.

Clause 36: Fees and returns

This clause deals with the payment of registration, reinstatement and annual practice fees, and requires registered persons to furnish the Board with an annual return in relation to their veterinary practice, continuing veterinary education and other matters relevant to their registration under the measure. It empowers the Board to remove from a register the name of a person who fails to pay the annual practice fee or furnish the required return.

Clause 37: Variation or revocation of conditions of registration

This clause empowers the Board, on application by a veterinary surgeon, to vary or revoke a condition imposed by the Board on his or her registration.

Clause 38: Contravention of conditions of registration

This clause makes it an offence for a person to contravene or fail to comply with a condition of his or her registration and fixes a maximum penalty of $75 000 or imprisonment for six months.

PART 4

VETERINARY PRACTICE

DIVISION 1—GENERAL OFFENCES

Clause 39: Prohibition on provision of veterinary treatment for fee or reward by unqualified persons

This clause makes it an offence for a person to provide veterinary treatment for fee or reward unless, at the time the treatment was provided, the person was a qualified person or provided the treatment through the instrumentality of a qualified person. A maximum penalty of $50 000 or imprisonment for six months is fixed for the offence. However, these provisions do not apply in relation to veterinary treatment provided by an employee of the owner of the animal in the course of that employment or by an unqualified person in prescribed circumstances. In addition, the Governor is empowered, by proclamation, to grant an exemption if of the opinion that good reason exists for doing so in the particular circumstances of a case. The clause makes it an offence punishable by a maximum fine of $50 000 to contravene or fail to comply with a condition of an exemption.

Clause 40: Illegal holding out as veterinary surgeon or specialist

This clause makes it an offence for a person to hold himself or herself out as a veterinary surgeon, specialist or particular class of specialist or permit another person to do so unless registered on the appropriate register or in the appropriate specialty. It also makes it an offence for a person to hold out another as a veterinary surgeon, specialist or particular class of specialist unless the other person is registered on the appropriate register or in the appropriate specialty. In both cases a maximum penalty of $50 000 or imprisonment for 6 months is fixed.

Clause 41: Illegal holding out concerning limitations or conditions

This clause makes it an offence for a person whose registration is limited or conditional to hold himself or herself out, or permit another person to hold him or her out, as having registration that is not subject to a limitation or condition. It also makes it an offence for a person to hold out another whose registration is limited or conditional as having registration that is not subject to a limitation or condition. In each case a maximum penalty of $50 000 or imprisonment for 6 months is fixed.

Clause 42: Use of certain titles or descriptions prohibited

This clause creates a number of offences prohibiting a person who is not appropriately registered from using certain words or their derivatives to describe himself or herself or services that they provide, or in the course of advertising or promoting services that they provide. In each case a maximum penalty of $50 000 is fixed.

Clause 43: Board's approval required where veterinary surgeon has not practised for 3 years

This clause prohibits a veterinary surgeon who has not provided veterinary treatment for 3 years or more from providing such treatment for fee or reward without the prior approval of the Board

parties in this industry acknowledge that they are mutually dependent. There is no incentive for the grower community to seek more than the industry can reasonably bear.

The bill also supports growers by enabling them to seek advice from consultants and experts when engaging in collective negotiations with their processor. I shall now outline the structure of the scheme proposed by the bill. The critical factor on which the scheme depends is the requirement that each processor has a 'tied' or 'exclusive' relationship with particular growers for the term of their contract. Even if the contract does not specify an exclusive relationship, the nature of all but the most ad hoc of processor/grower arrangements will have that effect.

A 'tied' agreement includes the concept of 'switching' whereby a contracted grower is 'loaned' to another processor in order to balance capacity requirements between them. That should be regarded as an efficient outcome for all concerned. Exclusivity allows processors to manage their requirements for growing services over the longer term, ensures that the biosecurity (for example, cross-infection) of a processor's birds is not adversely affected, and ensures that the processor can adequately control the micro-management issues that arise during the growing cycle, such as shed maintenance, infrastructure standards and the supply of services such as medicines, feed, etc.

If the processor requires or will, in fact, achieve a tied relationship, the processor must give the grower a statutory notice inviting the grower to commence negotiations for a contract. The grower then has the option—

- of agreeing to negotiate on an individual basis with the processor; or
- of joining a collective negotiating group of all the other growers contracted, or chosen by the processor to be contracted, to that processor.

If the grower chooses to negotiate individually, that grower is essentially unregulated (except for the transparency requirement that all growing agreements must be in writing). There is a penalty included in the scheme for the purpose of requiring a processor to comply with the process of giving the statutory notice. That then allows the grower to choose whether to negotiate collectively or individually. Part 6 of the bill provides for an exemption under section 51 of the Trade Practices Act and under the Competition Code of South Australia for the giving by processors of the statutory notice, and for certain specified activities concerned with the collective negotiations, and the making of, and the giving effect to, growing agreements.

The exemption relates to activities between each individual processor and those growers who are recorded on the register as members of that processor's collective negotiating group. The activities include—

- the processor requiring the 'tied' relationship with the grower; and
- market sharing by growers of their available growing capacity; exclusive dealing arrangements imposed by the processor on growers relating to feed, medications and vaccines, sanitation chemicals, veterinary services, shed maintenance, harvesting and transport services, etc; and
- pricing arrangements, including price reviews.

In place of the previous Poultry Meat Industry Committee, the proposed scheme simply has a registrar appointed by the Minister, whose task is to maintain the register and undertake certain functions in relation to the number and election of growers' representatives, the calling of meetings of the negotiating group to vote on a contract, and in relation to referring a dispute to mediation or arbitration. In this way, it is intended to keep the administrative costs of the scheme to a minimum. Those costs may be recovered by a fee levied on industry participants.

As previously indicated, the terms of any growing agreements are left to be negotiated by the relevant parties, the processor and the growers. Compulsory arbitration at the election of either the processor or the growers is available if any dispute cannot be resolved. At any time, a grower may elect to leave a collective negotiating group and deal individually with a processor. Mediation and arbitration are available at the election of either processor or grower during the term of a contract if there is a dispute as to the obligations of either of them under a collectively negotiated growing agreement.

This would include a dispute on the terms to be agreed on a variation of any contract under a previously agreed variation clause. Part 8 of the bill provides a mechanism to ensure that a grower is not arbitrarily and unreasonably excluded from a future contract. As described above, there are factors that an arbitrator is required to take into account that preserve the commercial interests of the processor, while protecting the efficient grower at the expense of the less efficient grower. In particular, a grower cannot be excluded simply because that grower has a profile as a grower negotiator, or more generally, as a grower representative.

The bill contains the usual administrative provisions relating to the conduct of arbitration, provision for the appointment of a registrar and consequent delegations, a requirement for an annual report and provision for an annual fee to recover the cost of the registrar's operations. There is also a requirement for the minister to review the operation of the act, and to lay a copy of the report before parliament within six years of the commencement of the act. This will allow a period that reflects the traditional five-year contract and the negotiation of the next round of contracts.

The bill contains a scheme for transitional arrangements that deems all existing growing agreements, whether oral or written, as being arrived at through the collective negotiating process and, hence, includes all growers initially in collective negotiating groups. While these existing contracts will continue to operate according to their terms, disputes arising as to their operation and disputes as to the exclusion of any of the growers from further contracts are subject to the mediation and arbitration provisions of the scheme. Without the deeming transitional provision, many growers would not come within the scheme for up to five years.

Once a grower is a member of a negotiating group, the grower may at any time elect to leave and thus become unregulated. The transition arrangements do, however, allow the registrar, on application from either processor or grower, to exclude growers with certain types of contracts from each processor's negotiating groups. First, growers with 'probationary' contracts may be excluded. These are contracts that operate from batch to batch and do not follow on from a fixed-term contract between the grower and the same processor. A batch to batch contract may specify a single batch or a small number of batches, such that it is not, in effect, a contract for a fixed term.

Secondly, 'individual' agreements may be excluded. This is a contract that is of such a nature that it would be unlikely that it would have been negotiated collectively if the bill had been in operation at that time; that is, if the grower had been given a choice of collective or individual negotiations following receipt of the statutory notice, the grower would

have chosen individual negotiations. Such a contract will show significant differences from all other growing agreements with the relevant processor in relation to its period of operation or other principle terms and conditions.

For example, it is anticipated that a long-term contract (say, for 10 years) to support a new entrant with new investment with a pricing formula that was considerably different from the usual price range offered by that processor, reflecting the size and efficiencies of the new infrastructure, would usually be negotiated individually, not collectively, under the proposed scheme. However, contracts that have been signed recently which are artificially differentiated by period or other factors but which essentially retain the core of a processor's standard terms will not be regarded as 'individual' and thus excluded from a negotiating group whether or not the contract was in fact individually negotiated.

Prior to the scheme coming into operation, it is entirely predictable that growers desperate for a contract will be 'picked off' by processors anxious to exclude as many of their growers as possible from the operation of the scheme. Finally, it should be reiterated that there has been a considerable consultation program to support the development of this bill. While significant changes have been made to the scheme, the government considers that compulsory mediation and arbitration (even though opposed by the processors) is central to ensuring that the collective negotiations are genuine negotiations and not the present style of 'take it or leave it' negotiations under the ACCC authorisation.

That is not, of course, the fault of the ACCC; it is simply the fact that there is such an imbalance in bargaining power between processors and growers that collective negotiations per se do not provide growers with any significant counterweight to the processors. Without that right to mediation and arbitration there would be, essentially, no difference between the effect of the bill and the effect of the ACCC authorisation and no justification for the bill. I commend the bill to the council. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART 1: PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause contains definitions of words and phrases necessary for the interpretation of the legislative scheme proposed in this measure.

In particular, meat chicken means a chicken (a bird of the species *Gallus gallus* that is not more than 16 weeks old) grown under intensive housing conditions specifically for human consumption as meat after processing. A growing agreement is an agreement between a grower (*ie* a person who grows meat chickens under a growing agreement) and a person who carries on a business of processing meat chickens (a processor) that provides for the growing in SA by the grower of boiler chickens owned by the processor and the return of the chickens to the processor for processing in SA.

A growing agreement is a tied growing agreement if it has the effect of tying the grower to the processor by restricting the grower's freedom to grow meat chickens for processing by a processor other than the processor party to the agreement.

Clause 4: Exemptions

The Governor may exempt a person or a class of persons from the operation of the whole or particular provisions of the measure.

PART 2: INTENTION OF ACT

Clause 5: Intention of Act

This measure is in response to—

- the structural arrangements in the chicken meat industry;
- growers' sunk investments in their chicken farms;
- the processors' requirements for growing arrangements that tie growers to processors;
- the general imbalance in bargaining power between processors and growers.

It is the intention of this measure—

- that equity between processors and tied growers be promoted by allowing for collective negotiations and arbitration of disputes and by the appointment of a Registrar with functions including the facilitation of collective negotiations between processors and growers; and
- that arbitration under Parts 5, 7 and 8 of this measure take into account the need to promote best practice standards and fair and equitable conditions in the chicken meat industry and the need for the industry to be dynamic and commercially viable.

PART 3: REGISTRAR

Clause 6: Appointment of Registrar

A Public Service employee will be appointed by the Minister to be the Registrar for the purposes of this measure.

Clause 7: Registrar's functions

This clause sets out the Registrar's functions.

Clause 8: Delegation

The Registrar may delegate powers or functions under this measure.

Clause 9: Fee for Registrar's operations

Each processor and grower must pay the fee (to be prescribed and which may be differential) to the Registrar each financial year.

Clause 10: Annual report

The Registrar must, on or before 30 September in every year, forward to the Minister for tabling in the Parliament a report on his or her work and operations for the preceding financial year.

PART 4: REGISTRATION

Clause 11: Interpretation

This clause provides for interpretation mechanisms for Part 4.

Clause 12: Registration

The Registrar must maintain a register containing certain information about processors and growers to allow for the legislative scheme proposed to be administered.

Clause 13: Notification of information required for register

A processor must provide the Registrar with certain up-to-date information about growing agreements and the growers with whom the processor has a growing agreement.

PART 5: GROWING AGREEMENTS

DIVISION 1—GENERAL PROVISIONS

Clause 14: Growing agreements to be in writing

A growing agreement made after the commencement of this clause is of no effect except to the extent that it is recorded in writing.

Clause 15: Offence to attempt to tie grower to processor

It is an offence for a processor who is negotiating or party to a growing agreement with a grower to, by words or conduct, attempt to tie the grower to the processor. (Maximum penalty: $100 000.) However, this does not apply to—

- negotiations commenced under Part 5 for a tied growing agreement, or for a variation of such an agreement; or
- the making or enforcement of a tied growing agreement the negotiations for which were commenced under Part 5; or
- the enforcement of a tied growing agreement made before the commencement of this clause.

DIVISION 2—COMMENCING NEGOTIATIONS FOR TIED GROWING AGREEMENTS

Clause 16: Commencing negotiations for tied growing agreements

A processor must not commence to negotiate a tied growing agreement with a grower unless the processor has, within the preceding 3 months, given the grower a written notice, in the prescribed form—

- stating that the processor proposes to commence negotiations with the grower for a tied growing agreement; and
- inviting the grower to indicate, within 4 weeks, by written notice—
  - if the grower is not a member of a negotiating group with the processor, whether the grower wishes to be a member of a negotiating group with the processor; or
  - if the grower is a member of a negotiating group with the processor, whether the grower no longer wishes to be a member of a negotiating group with the processor.

(Maximum penalty: $100 000.)

DIVISION 3—COLLECTIVELY NEGOTIATING TIED GROWING AGREEMENTS

Clause 17: Negotiating group's role

A negotiating group may collectively negotiate (personally or through agents, advisers or other consultants) and agree with the processor a tied growing agreement, or a variation of a tied growing agreement, between the members of the negotiating group and the processor.

Clause 18: Grower negotiators for negotiating groups

The Registrar must appoint grower negotiators (not exceeding 4 in number) for a negotiating group to conduct collective negotiations on behalf of the group for a tied growing agreement with the processor. When determining the number of grower negotiators, the Registrar must take into account the size of the negotiating group, the varying interests of the members of the negotiating group and any other relevant factor.

A person appointed as a grower negotiator must be a member of the negotiating group determined in accordance with nomination and election processes approved by the Registrar.

Clause 19: Decision making by negotiating groups

This clause sets out how agreements are reached by negotiating groups.

Clause 20: Arbitration

If a negotiating group fails to agree a tied growing agreement with the processor within a time fixed by the Registrar, the matter in dispute must be referred to arbitration if the processor or a majority of the members of the negotiating group vote in favour of the matter being referred to arbitration. A dispute referred to arbitration in accordance with this clause will be taken to have been so referred with the agreement of the processor and all members of the negotiating group. Schedule 2 applies in relation to the reference of the dispute to arbitration and the arbitration of the dispute.

DIVISION 4—OPERATION OF TIED GROWING AGREEMENTS

Clause 21: Operation of tied growing agreements

A tied growing agreement collectively negotiated between the members of a negotiating group and the processor under Part 5 expires on the fifth anniversary of the day on which agreement was reached or an earlier day specified in the tied growing agreement. However, a tied growing agreement collectively negotiated thus will continue to bind the processor and a grower for a further period (not exceeding 5 years) if the processor and the grower so agree before the expiry of the growing agreement. A provision of a tied growing agreement collectively negotiated under Part 5 prevails over any other agreement between the processor and a member of the negotiating group to the extent of any inconsistency.

PART 6: TRADE PRACTICES AUTHORISATION

Clause 22: Trade practices authorisation

The following are authorised for the purposes of section 51 of the *Trade Practices Act 1974* of the Commonwealth, as in force from time to time, and the *Competition Code of South Australia*:

- giving notices to growers of a proposal to commence negotiations for a tied growing agreement under Part 5;
- engaging in collective negotiations for a tied growing agreement under Part 5;
- in the course of collective negotiations for a tied growing agreement under Part 5, making or giving effect to an agreement by members of the negotiating group to refuse or restrict the provision of their services as growers;
- making a tied growing agreement collectively negotiated under Part 5;
- giving effect to a tied growing agreement collectively negotiated under Part 5.

The authorisation applies in relation to a tied growing agreement only in so far as the agreement—

- has the effect of restricting the freedom of a grower to grow meat chickens for processing by a person other than the processor; or
- has the effect of restricting the freedom of a grower to obtain feed, medication, vaccines, sanitation chemicals, etc., from a person other than the processor or a person nominated by the processor; or
- provides for the sharing among growers of the right to provide their services as growers; or
- provides for a common pricing scheme, including a discount, allowance, rebate or credit, for the provision by growers of their services as growers.

PART 7: DISPUTES ARISING FROM PROCESSOR OR GROWER OBLIGATIONS

Clause 23: Interpretation and application

Part 7 applies to a dispute between a processor and a grower or former grower if the dispute relates to the obligations of either or both under a tied growing agreement collectively negotiated under Part 5.

Clause 24: Mediation

The Registrar must, if asked by the processor or grower, and subject to a number of considerations by the Registrar, refer a dispute to mediation.

Clause 25: Arbitration

Subject to certain considerations, the Registrar must, if asked by the processor or grower, refer the dispute to arbitration if, in the case of a dispute that has been referred to mediation under Part 5, the mediation has been terminated without resolution or, in any other case, the Registrar considers that it is highly unlikely that the dispute would be resolved through mediation.

Schedule 2 applies in relation to the reference of the dispute to arbitration and the arbitration of the dispute.

PART 8: DISPUTES RELATING TO EXCLUSION OF GROWERS

Clause 26: Interpretation and application

Clause 27: Mediation

Clause 28: Arbitration

Part 8 is very similar to Part 7 except that the mediation and arbitration procedures apply to a dispute between a processor and a grower or former grower if—

- the grower is or was party to the tied growing agreement last collectively negotiated with the processor under Part 5; and
- the dispute relates to the grower's exclusion from the group of growers given notice by the processor of a proposal to commence negotiations for a further tied growing agreement under Part 5.

PART 9: MISCELLANEOUS

Clause 29: General penalty

The general penalty for a person who fails to comply with a provision of this measure is a fine of $25 000.

Clause 30: Prosecutions

A prosecution for an offence against this measure cannot be commenced except by a person who has the consent of the Minister to do so.

Clause 31: Service

This clause provides for the service of any documents required to be served under this measure.

Clause 32: Regulations

The Governor may make regulations for the purposes of this measure.

Clause 33: Review of Act

The Minister must, within 6 years after the commencement of legislative scheme proposed by this measure, cause a report to be prepared on its operation and a copy of the report to be laid before each House of Parliament.

SCHEDULE 1: Repeal and Transitional Provisions

The schedule contains the repeal of the *Poultry Meat Industry Act 1969* and a transitional provision.

SCHEDULE 2: Arbitration

This schedule contains provisions setting out the arbitration procedures for the measure.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.