**CHICKEN MEAT INDUSTRY (ARBITRATION) AMENDMENT BILL 2004**

**Legislative Assembly, 30 June 2004, pages 2623-4**

Second reading

**The Hon. R.J. McEWEN (Minister for Agriculture, Food and Fisheries**) obtained leave and introduced a bill for an act to amend the Chicken Meat Industry Act 2003. Read a first time.

The Hon. R.J. McEWEN: I move: That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it. Leave granted.

This Bill amends the Chicken Meat Industry Act 2003 (the current Act) to achieve compliancy with National Competition Policy. The current Act has been assessed by the National Competition Council (NCC) as non-compliant, resulting in a 5 percent permanent annual reduction in competition payments, with the amount for 2003-2004 being $2.93 million.

Parliament passed the Chicken Meat Industry Bill on 16 July 2003 to repeal the Poultry Meat Industry Act 1969 and offer growers a choice between collective or individual bargaining with processors. Collective bargaining under the Bill was supported by compulsory mediation and arbitration as disciplines to negotiation.

The basis for the development of the current Act was to address concern about the significant imbalance in bargaining power between growers and processors and, consequently, the power imbalance in the contractual and other on-going relationships between those 2 sectors of the industry. That this imbalance exists is not in debate. The case for addressing the imbalance of power in negotiation between growers and processors of chicken meat clearly has been established and accepted, including by the NCC.

As part of the development of the original Bill, a broad program of consultation was undertaken with all parties. Negotiations with NCC officers during the early development of the original Bill led South Australian government officers to believe that compliance was possible. The Act was proclaimed to come into operation on 21 August 2003, with suspension of nearly all but the transitional provision initially, pending a decision by the NCC on the compliance of the Act and, later, on the outcome of the State’s appeal to the Federal Treasurer on the penalty imposed.

The November 2003 assessment of the NCC found that the Act was not compliant. Reasons given for non-compliance included likely higher transaction costs arising from compulsory arbitration for negotiating contracts, higher growing fees making South Australia less attractive for processor investment, and the prospect of similar or more restrictive arrangements being introduced in jurisdictions that earlier opened their markets to greater competition.

The South Australian Government subsequently lodged an appeal with the Federal Treasurer against the NCC assessment and was notified on 8 December 2003 that its appeal had been unsuccessful.

The Minister met with the President of the NCC in March to seek resolution of the situation following correspondence and approaches initiated by the previous Minister to establish an earlier meeting. The NCC suggested that to achieve compliance the South Australian legislation needed to be amended.

Some concessions by the NCC have been made but their core objection continues to be against compulsory arbitration in relation to resolving disputes during negotiations for new or renewed contracts.

The current Act makes several references to mediation and arbitration with both being available to resolve disputes arising from a contract in progress, and the exclusion of a grower from a collective negotiating group. For resolving disputes arising from negotiating growing agreements, arbitration can be sought by either party. The effective date for access to the mediation and arbitration provisions was set by the initial proclamation of the Act on 21 August 2003.

It is now clear that the NCC will not change its view on the current Act with the main offending part narrowed down to the availability of arbitration when growers and a processor cannot agree on a contract (ie Part 5, Section 21). Other provisions appear to be acceptable to the NCC, provided that arbitration as a possibility in current Part 5 is replaced by mediation.

A competition payment penalty will result from the NCC’s 2004 assessment if the Act is not amended by June 30 2004.

The replacement of arbitration by mediation in the Act on disputes relating to collective negotiations for growing agreements may be seen as a change from the original intent of Parliament. However, the Act with this amendment still imposes significant disciplines on both processors and growers and, in particular, obligates processors to negotiate with groups of growers in a way that has not previously been available to growers in this State. Significant mediation and arbitration provisions still continue to be available, unchanged by the proposed amendments.

Without testing the effectiveness of these provisions and the role of the Registrar in maintaining these processes to resolve disputes between growers and processors, we will not be able to convince the NCC of the need for compulsory arbitration for contract negotiation. Growers may see these amendments as changing the balance of power in favour of processors but, even with this concession to the NCC, the negotiation power of growers operating under the Act will be much improved in comparison to recent experience.

The NCC also argued that access to arbitration, following notice from a processor that a grower is to be excluded from a negotiation group and therefore a future contract, should be limited to growers who were in the industry prior to 1996. It argued that later entrants would have been aware that the industry was not to be regulated following the introduction of the 1996 Bill to repeal the Poultry Meat Industry Act 1969.

The Government’s view, however, is that there is no basis for the NCC’s position on the 1996 cut-off and, indeed, the growers’ demands for regulation and their expectations were higher after the Repeal Bill failed to pass through Parliament than previously.

The Bill amends the Act to restrict access to compulsory mediation/arbitration provisions to growers who are participants in the industry prior to the Act taking full effect after Proclamation.

If the Government fails to make the changes to the legislation required by the NCC by 30 June 2004, State competition payments received in 2005-06 from the 2004 assessment would be reduced by another 5 percent ($2.93m in 2003-04).

The Government will carefully monitor the operation of the amended Chicken Meat Industry Act 2003 to ensure that mediation on contract negotiation is effective and to ensure that it facilitates the orderly adjustment of the industry through better negotiating processes. In the end, South Australia must strive to be competitive, and become competitive, with growers in other States if we are to maintain our industry. This Act is intended to support that principle.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary 1—Short title 2—Commencement 3—Amendment provisions These clauses are formal.

Part 2—Amendment of Chicken Meat Industry Act 2003 4—Amendment of section 5—Intention of Act This amendment is consequential on the removal of the right to seek arbitration in relation to disputes under

Part 5. 5—Amendment of section 9—Registrar’s obligation to preserve confidentiality This proposed amendment will allow for the Registrar to provide a mediator mediating a dispute under the Act with information that would otherwise be confidential. 6—Amendment of section 21—Mediation The proposed amendments to this section will remove the right to seek arbitration if a negotiating group fails to agree a growing agreement within a certain period and instead provide for such a dispute to be referred to mediation. 7—Amendment of section 28—Interpretation and application The proposed amendments will restrict the application of Part 8 to disputes relating to the exclusion from collective negotiations for a further growing agreement of growers to those growers who were, immediately before the commencement of Part 8, party to a growing agreement collectively negotiated with the processor, or party to such an agreement when it expired. 8—Amendment of Schedule 2—Arbitration This amendment is consequential.

Mr VENNING secured the adjournment of the debate.