

South Australia

## **Chicken Meat Industry Act 2003**

An Act to provide for stabilisation of the chicken meat industry; to repeal the *Poultry Meat Industry Act 1969*; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *Chicken Meat Industry Act 2003*.

**2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

**3—Interpretation**

In this Act—

*chicken* means a bird of the species *Gallus gallus* that is not more than 16 weeks old;

*chicken meat* means meat produced from meat chickens;

*exclusion notice* means a written notice under Part 5 Division 5;

*grower* means a person who grows meat chickens under a growing agreement;

*grower negotiator*, in relation to a processor, means a grower appointed by the Registrar under Part 5 to conduct collective negotiations on behalf of the negotiating group for a growing agreement with the processor;

*growing agreement* means an agreement between a grower and a processor providing for the growing in South Australia by the grower of meat chickens owned by the processor and the return of the chickens to the processor for processing in South Australia;

*meat chicken* means a chicken grown under intensive housing conditions specifically for human consumption as meat after processing;

*negotiating group*, in relation to a processor, means, if at least 4 growers are recorded in the register under Part 4 as eligible to be members of a negotiating group with the processor, those growers;

*processing* means the sequence of acts done for the purpose of producing chicken meat for sale, commencing with the killing of each meat chicken and ending with the removal of the chicken meat from the processing plant for the purposes of sale;

*processor* means a person who carries on a business of processing meat chickens returned to the processor under a growing agreement;

*Registrar* means the person for the time being holding or acting in the position of Registrar under Part 3.

## **4—Exemptions**

- (1) The Governor may, by proclamation, exempt (whether conditionally or unconditionally) a person or class of persons from the application of this Act or a provision of this Act.
- (2) A proclamation under this section may be varied or revoked by further proclamation.

## **Part 2—Intention of Act**

### **5—Intention of Act**

- (1) This Act is enacted by the Parliament in response to—
  - (a) the structural arrangements in the chicken meat industry; and
  - (b) growers' sunk investments in their chicken farms; and
  - (c) the contractual practices, bio-security and other farm management issues and the commercial factors that restrict growers to exclusive dealings with processors (at least for the terms of growing agreements); and
  - (d) the general imbalance in bargaining power between processors and growers.
- (2) It is the intention of this Act—
  - (a) that equity between processors and growers be promoted—
    - (i) by allowing for collective negotiations and arbitration of disputes; and
    - (ii) by the appointment of a Registrar with functions including the facilitation of collective negotiations between processors and growers; and
  - (b) that arbitration under Parts 5, 7 and 8 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**

### **6—Appointment of Registrar**

- (1) There will be a Registrar for the purposes of this Act.
- (2) The Minister will appoint a Public Service employee to be the Registrar.
- (3) The Minister may assign a Public Service employee to act as the Registrar—
  - (a) during a vacancy in the office of Registrar; or
  - (b) when the Registrar is absent from, or unable to discharge, official duties.

### **7—Registrar's functions**

- (1) The Registrar's functions are—
  - (a) to perform the Registrar's functions relating to growing agreements and dispute resolution under Parts 5, 7 and 8; and
  - (b) to facilitate collective negotiations between processors and growers; and

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- (c) to gather and maintain current information about growing costs and pricing in the chicken meat industry in South Australia and (so far as is reasonably achievable) in other parts of Australia, and to publish (whether in the Gazette, on a website or otherwise) the information in a general form consistent with the Registrar's obligations of confidentiality; and
      - (d) to advise the Minister on the administration and operation of this Act; and
      - (e) to perform any other function assigned to the Registrar by the Minister.
    - (2) The Registrar must give consideration to any submissions made to the Registrar about the accuracy or completeness of information about growing costs and pricing published by the Registrar and make any adjustment to the information that the Registrar considers appropriate in view of the submissions.
    - (3) The Registrar may, at any time, and must, at the request of the Minister, report to the Minister on any issue concerning the chicken meat industry.

### **8—Registrar's power to require information**

- (1) A person must, if required to do so by the Registrar by written notice—
  - (a) give the Registrar, within a time and in a manner stated in the notice (which must be reasonable), information in the person's possession that the Registrar reasonably requires for the performance of the Registrar's functions under this Act; and
  - (b) verify the information by statutory declaration.
- (2) A person cannot be compelled to give information under this section if the information might tend to incriminate the person of an offence.

### **9—Registrar's obligation to preserve confidentiality**

- (1) The Registrar must preserve the confidentiality of information gained in the course of the performance of the Registrar's functions under this Act that—
  - (a) could affect the competitive position of a processor, grower or some other person; or
  - (b) is commercially sensitive for some other reason.
- (2) Subsection (1) does not apply to the disclosure of information between—
  - (a) persons engaged in the administration of this Act; or
  - (b) the Registrar and an arbitrator arbitrating a dispute under this Act.
- (3) Information classified by the Registrar as confidential is not liable to disclosure under the *Freedom of Information Act 1991*.

### **10—Delegation**

- (1) The Registrar may delegate powers or functions under this Act.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the Registrar to act in any matter; and

(d) is revocable at will by the Registrar.

### **11—Fee for Registrar's operations**

- (1) Each processor and grower must pay the prescribed fee to the Registrar each financial year.
- (2) Differential fees may be prescribed for the purposes of subsection (1).
- (3) The fee must be paid at such intervals and in such manner as the Registrar directs by written notice given to the processor or grower.
- (4) If a processor or grower fails to pay a fee as required under this section, the Registrar may require the processor or grower, by written notice, to make good the default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.
- (5) A fee (including any penalty for default) payable by a person under this section is recoverable as a debt due to the Crown.

### **12—Annual report**

- (1) The Registrar must, on or before 30 September in every year, forward to the Minister a report on his or her work and operations for the preceding financial year.
- (2) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## **Part 4—Registration**

### **13—Interpretation**

- (1) For the purposes of this Part, a growing agreement includes (as well as a growing agreement in writing) a growing agreement that came into existence before the commencement of section 16 and is oral, or partly oral and partly in writing, or evidenced only by a course of dealing between the parties.
- (2) For the purposes of this Part, a grower is eligible to be a member of a negotiating group with a processor if the grower indicates, by written notice under section 17, that the grower wishes to be a member of a negotiating group with the processor.
- (3) For the purposes of this Part, a grower ceases to be eligible to be a member of a negotiating group with a processor—
  - (a) if, before the expiry of a growing agreement to which the grower is party with the processor—
    - (i) the grower ceases to be bound by the agreement; or
    - (ii) the grower indicates, by written notice to the processor, that the grower no longer wishes to be a member of the negotiating group; or
  - (b) if the processor has given the grower an exclusion notice—6 months before the expiry of the growing agreement to which the grower is party with the processor.

### **14—Registration**

- (1) The Registrar must maintain a register containing the following information:
  - (a) the name and business address of each processor;

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- (b) in respect of each processor—
    - (i) the name and business address of each grower party to a growing agreement with the processor and whether the grower is eligible to be a member of a negotiating group with the processor; and
    - (ii) the dates on which each growing agreement to which the processor is party was formed and is to expire, whether the agreement was collectively negotiated under Part 5 and the names of the growers party to the agreement;
  - (c) any other information that the Registrar considers appropriate.
- (2) The register is to be available for inspection, without fee, during ordinary office hours at a public office, or public offices, determined by the Minister.
  - (3) The Minister must ensure that copies of material on the register can be purchased for a reasonable fee at the public office, or public offices, at which the register is kept available for inspection.

### **15—Notification of information required for register**

- (1) A processor must, within 14 days after the commencement of this section, give the Registrar written notice of—
  - (a) the name and business address of the processor; and
  - (b) for each growing agreement to which the processor is party at the commencement of this section—
    - (i) the name and business address of each grower party to the agreement; and
    - (ii) the date on which the agreement was formed and the date on which the agreement is to expire.
- (2) If a processor becomes party to a growing agreement, the processor must, within 14 days, give the Registrar written notice of—
  - (a) the date on which the agreement was formed and the date on which the agreement is to expire; and
  - (b) whether the agreement was collectively negotiated under Part 5; and
  - (c) the name and business address of each grower party to the agreement.
- (3) If a processor becomes aware of a change in the name or business address of a grower party to a growing agreement with the processor, the processor must, within 14 days, give the Registrar written notice of the new name or business address.
- (4) If a grower gives a processor written notice under section 17 indicating that the grower wishes to be a member of a negotiating group with the processor, the processor must, within 14 days, give the Registrar written notice of that fact and the name and business address of the grower.
- (5) If a grower gives a processor written notice, before the expiry of a growing agreement to which the grower is party with the processor, indicating that the grower no longer wishes to be a member of a negotiating group with the processor, the processor must, within 14 days, give the Registrar written notice of that fact and identify the grower by the grower's name and business address last notified to the Registrar.

- (6) If a grower ceases to be bound by a growing agreement with a processor, the processor must, within 14 days, give the Registrar written notice of that fact and identify the grower by the grower's name and business address last notified to the Registrar.
- (7) If a processor gives a grower an exclusion notice, the processor must, within 14 days, give the Registrar written notice of that fact and identify the grower by the grower's name and business address last notified to the Registrar.

## **Part 5—Growing agreements**

### **Division 1—Growing agreements to be in writing**

#### **16—Growing agreements to be in writing**

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

### **Division 2—Commencing negotiations for growing agreements**

#### **17—Commencing negotiations for growing agreements**

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

- (a) stating that the processor proposes to commence negotiations with the grower for a growing agreement; and
- (b) inviting the grower to indicate, within 4 weeks, by written notice—
  - (i) 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
  - (ii) 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 growing agreements**

#### **18—Negotiating group's role**

- (1) A negotiating group may collectively negotiate and agree with the processor a growing agreement, or a variation of a growing agreement, between members of the negotiating group and the processor.
- (2) A negotiating group may engage an agent, adviser or other consultant to assist in collective negotiations with the processor.
- (3) An agent, adviser or other consultant engaged by a negotiating group to assist in collective negotiations must not assist any other negotiating group in its collective negotiations with a processor.

## **19—Grower negotiators for negotiating groups**

- (1) The Registrar must appoint grower negotiators for a negotiating group to conduct collective negotiations on behalf of the negotiating group for a growing agreement with the processor.
- (2) The Registrar must determine the number of grower negotiators (which must not exceed 4) for a negotiating group, taking into account the size of the negotiating group, the varying interests of the members of the negotiating group and any other relevant factor.
- (3) A person appointed by the Registrar as a grower negotiator must be a member of the negotiating group determined in accordance with nomination and election processes approved by the Registrar.
- (4) The Registrar must terminate the appointment of a grower negotiator if the members of the negotiating group vote in accordance with processes approved by the Registrar for the removal of the grower negotiator.
- (5) The office of a grower negotiator becomes vacant if—
  - (a) the person dies; or
  - (b) the person resigns by written notice to the Registrar; or
  - (c) the person is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (d) the appointment of the person is terminated under subsection (4).
- (6) If the office of a grower negotiator becomes vacant under subsection (5), the Registrar may appoint a member of the negotiating group determined in accordance with a nomination and election process approved by the Registrar to fill the vacancy.

## **20—Decision making by negotiating groups**

- (1) The grower negotiators for a negotiating group reach agreement with the processor if—
  - (a) all of the grower negotiators concur; or
  - (b) if there are more than 2 grower negotiators, all of them other than 1 concur.
- (2) If the grower negotiators reach an agreement with the processor, the negotiating group reaches the same agreement with the processor if a majority of the members of the negotiating group present and voting at a meeting convened for the purpose vote in favour of the agreement.
- (3) A meeting for the purposes of subsection (2) must be convened by the Registrar at the Registrar's own initiative or within 2 months after the Registrar receives a request from the grower negotiators that such a meeting be convened.
- (4) The Registrar must ensure that all members of the negotiating group are given written notice of the meeting and that the vote is taken in accordance with a process approved by the Registrar.

## **21—Arbitration**

- (1) If a negotiating group fails to agree a growing agreement with the processor within a time fixed by the Registrar, the matter in dispute must be referred by the Registrar to arbitration if—
  - (a) the processor so requests; or
  - (b) a majority of the members of the negotiating group present and voting at a meeting convened for the purpose vote in favour of the matter being referred to arbitration.
- (2) A meeting for the purposes of subsection (1)(b) must be convened by the Registrar at the Registrar's own initiative or within 2 months after the Registrar receives a request from the grower negotiators that such a meeting be convened.
- (3) The Registrar must ensure that all members of the negotiating group are given written notice of the meeting and that the vote is taken in accordance with a process approved by the Registrar.
- (4) However, the Registrar need not refer a dispute to arbitration if the Registrar considers that insufficient attempts have been made (through mediation or otherwise) to reach agreement on the matter in dispute.
- (5) A dispute referred to arbitration under this section will be taken to have been so referred with the agreement of the processor and all members of the negotiating group, and the arbitration will be taken to form part of the collective negotiation process under this Part.
- (6) Schedule 2 applies in relation to the reference of the dispute to arbitration and the arbitration of the dispute.
- (7) The arbitrator must, in arbitrating the dispute, have regard to the information published by the Registrar relating to growing costs and pricing in the chicken meat industry and, in doing so, is not required to entertain any argument about the accuracy or completeness of the information.
- (8) The Registrar must, if so requested by the arbitrator, provide the arbitrator with information in the Registrar's possession relevant to the dispute.

## **Division 4—Operation of growing agreements**

### **22—Operation of growing agreements**

- (1) A growing agreement collectively negotiated between the members of a negotiating group and the processor under this Part expires on the day specified in the growing agreement.
- (2) However, a growing agreement collectively negotiated under this Part will continue to bind the processor and a grower for a further specified period if the processor and the grower so agree before the expiry of the growing agreement.
- (3) A provision of a growing agreement collectively negotiated under this Part prevails, to the extent of any inconsistency, over any other agreement between the processor and a member of the negotiating group that was not collectively negotiated under this Part.

## Division 5—Exclusion notices

### 23—Exclusion notices

A processor party to a growing agreement with a grower who intends to exclude the grower from negotiations for a further growing agreement with the processor must, at least 6 months before the expiry of the growing agreement, give the grower an exclusion notice.

## Part 6—Trade practices authorisation

### 24—Trade practices authorisation

- (1) 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*:
  - (a) giving notices to growers of a proposal to commence negotiations for a growing agreement under Part 5;
  - (b) engaging in collective negotiations for a growing agreement under Part 5;
  - (c) making a growing agreement collectively negotiated under Part 5;
  - (d) giving effect to a growing agreement collectively negotiated under Part 5.
- (2) Subsection (1) applies in relation to a growing agreement only insofar as the agreement—
  - (a) has the effect of restricting the freedom of a grower to grow meat chickens for processing by a person other than the processor; or
  - (b) has the effect of restricting the freedom of a grower to obtain feed, medication, vaccines, sanitation chemicals, veterinary, shed maintenance, transport or harvesting services, or technical advice or assistance, from a person other than the processor or a person nominated by the processor; or
  - (c) provides for the sharing among growers of the right to provide their services as growers; or
  - (d) provides for a common pricing scheme, including a discount, allowance, rebate or credit, for the provision by growers of their services as growers.
- (3) For the purposes of subsection (2), a **common pricing scheme** is a scheme that includes one or more of the following elements:
  - (a) a standard or common price;
  - (b) payments from a common pool;
  - (c) criteria for rating grower efficiency, and incentives for meeting or exceeding the criteria involving additional payment, or consequences for failure to meet the criteria involving non-payment, reduced payment or termination of the agreement;
  - (d) periodic reviews of any of the above elements.

- (4) In this section—  
*agreement* includes an arrangement and an understanding;  
*growing agreement* includes a proposed growing agreement.

## **Part 7—Disputes arising from processor or grower obligations**

### **25—Interpretation and application**

- (1) In this Part—  
*grower* includes a former grower.
- (2) This Part applies to a dispute between a processor and a grower if the dispute arises from the obligations of either or both under a growing agreement collectively negotiated under Part 5.
- (3) This Part does not apply to a grower if the grower indicates, by written notice to the processor, that the grower no longer wishes to be a member of a negotiating group with the processor.

### **26—Mediation**

- (1) Subject to subsection (2), the Registrar must, if asked by the processor or grower, refer the dispute to mediation.
- (2) The Registrar need not refer a dispute to mediation if the Registrar considers that—
- (a) the parties have not undertaken sufficient negotiations in relation to the subject matter of the dispute or have not undertaken negotiations in good faith; or
  - (b) it is highly unlikely that the dispute would be resolved through mediation; or
  - (c) the subject matter of the dispute is trivial, misconceived or lacking in substance; or
  - (d) there are other good reasons why the dispute should not be referred to mediation.
- (3) The mediation must be conducted by—
- (a) a person agreed to by the parties; or
  - (b) if the parties cannot agree on a mediator, the Registrar or some other person appointed by the Registrar who is, in the opinion of the Registrar, suitably qualified to mediate the dispute.
- (4) The costs of a mediation—
- (a) must be determined in accordance with a scale approved by the Registrar; and
  - (b) must be borne by the parties in proportions determined by the mediator; and
  - (c) will be recoverable by the mediator as a debt.
- (5) Nothing in this section affects any rights or remedies to which a party to the dispute may be entitled.

## 27—Arbitration

- (1) Subject to subsection (2), the Registrar must, if asked by the processor or grower, refer the dispute to arbitration if—
  - (a) in the case of a dispute that has been referred to mediation under this Part—the mediation has been terminated without resolution; or
  - (b) in any other case—the Registrar considers that it is highly unlikely that the dispute would be resolved through mediation under this Part.
- (2) The Registrar need not refer a dispute to arbitration if the Registrar considers that—
  - (a) the parties have not undertaken negotiations in good faith; or
  - (b) there are other good reasons why the dispute should not be referred to arbitration.
- (3) A dispute referred to arbitration under this section will be taken to have been so referred with the agreement of the processor and grower.
- (4) 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

### 28—Interpretation and application

- (1) In this Part—

*grower* includes a former grower.
- (2) This Part applies to a dispute between a processor and a grower if—
  - (a) the grower is party to a growing agreement collectively negotiated with the processor under Part 5, or was party to such an agreement when it expired; and
  - (b) the dispute relates to the grower's exclusion from the group of growers negotiating a further growing agreement with the processor.

### 29—Mediation

- (1) Subject to subsection (2), the Registrar must, if asked by the grower, refer the dispute to mediation.
- (2) The Registrar need not refer a dispute to mediation if the Registrar considers that—
  - (a) the parties have not undertaken sufficient negotiations in relation to the subject matter of the dispute or the grower has not undertaken negotiations in good faith; or
  - (b) it is highly unlikely that the dispute would be resolved through mediation; or
  - (c) there are other good reasons why the dispute should not be referred to mediation.
- (3) The mediation must be conducted by—
  - (a) a person agreed to by the parties; or

- (b) if the parties cannot agree on a mediator, the Registrar or some other person appointed by the Registrar who is, in the opinion of the Registrar, suitably qualified to mediate the dispute.
- (4) The costs of a mediation—
  - (a) must be determined in accordance with a scale approved by the Registrar; and
  - (b) must be borne by the parties in proportions determined by the mediator; and
  - (c) will be recoverable by the mediator as a debt.
- (5) Nothing in this section affects any rights or remedies to which a party to the dispute may be entitled.

### **30—Arbitration**

- (1) Subject to subsection (2), the Registrar must, if asked by the grower, refer the dispute to arbitration if—
  - (a) in the case of a dispute that has been referred to mediation under this Part—the mediation has been terminated without resolution; or
  - (b) in any other case—the Registrar considers that it is highly unlikely that the dispute would be resolved through mediation under this Part.
- (2) The Registrar need not refer a dispute to arbitration if the Registrar considers that—
  - (a) the grower has not undertaken negotiations in good faith; or
  - (b) there are other good reasons why the dispute should not be referred to arbitration.
- (3) The arbitrator must, in arbitrating a dispute to which this Part applies, determine whether the grower has been unreasonably excluded from the group of growers negotiating a further growing agreement under Part 5, and must take into account—
  - (a) the need to redress the imbalance in negotiating power between processors and growers; and
  - (b) any change in the level of growing services that the processor proposes to require from growers; and
  - (c) the grower's level of efficiency as a grower; and
  - (d) the grower's level of compliance with the grower's obligations; and
  - (e) any activities of the grower as a grower negotiator or representative of growers; and
  - (f) any activities of the grower causing commercial detriment to the processor; and
  - (g) the interests of the chicken meat industry.
- (4) A dispute referred to arbitration under this section will be taken to have been so referred with the agreement of the processor and grower.
- (5) Schedule 2 applies in relation to the reference of the dispute to arbitration and the arbitration of the dispute.

## **Part 9—Miscellaneous**

### **31—General penalty**

A person is guilty of an offence if the person fails to comply with another provision of this Act for which no penalty is specifically fixed.

Maximum penalty: \$25 000.

### **32—Prosecutions**

- (1) A prosecution for an offence under this Act cannot be commenced except by a person who has the consent of the Minister to commence the prosecution.
- (2) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying consent to a prosecution for an offence under this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

### **33—Service**

- (1) A notice or document required or authorised to be given to a processor or grower may—
  - (a) be given to the person personally; or
  - (b) be posted in an envelope addressed to the person—
    - (i) at the person's last known address; or
    - (ii) at the person's address for service; or
  - (c) be left for the person at the address for service with someone apparently over the age of 16 years; or
  - (d) be transmitted by facsimile transmission or e-mail to a facsimile number or e-mail address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) The address for service, facsimile number or e-mail address of a processor or grower is the address or number for the person that appears in the register maintained by the Registrar under this Act.

### **34—Regulations**

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

### **35—Review of Act**

The Minister must, within 5 years after the commencement of this Act or any provision of this Act—

- (a) cause a report to be prepared on the operation of this Act; and
- (b) cause a copy of the report to be laid before each House of Parliament.

### **36—Expiry of Act**

- (1) Subject to a proclamation under subsection (2), this Act will expire on the sixth anniversary of the commencement of this Act.
- (2) The Governor may, by proclamation, postpone the expiry of this Act for a period not exceeding 2 years.

## **Schedule 1—Repeal and transitional provisions**

### **1—Repeal**

The *Poultry Meat Industry Act 1969* is repealed.

### **2—Transitional provision**

- (1) If a processor and a grower are parties to a growing agreement immediately before the commencement of this clause—
  - (a) the agreement will be taken to be a growing agreement collectively negotiated under Part 5; and
  - (b) the grower will, subject to section 13(3)(b), be taken to be eligible to be a member of a negotiating group with the processor.
- (2) Subclause (1) does not apply to an agreement if the Registrar is satisfied on application that the agreement is a probationary agreement.
- (3) A growing agreement is a probationary agreement if it operates from batch to batch of meat chickens and does not follow on from a previous fixed term growing agreement between the processor and the grower parties to the probationary agreement.
- (4) For the purposes of this clause, a growing agreement includes (as well as a growing agreement in writing) a growing agreement that is oral, or partly oral and partly in writing, or evidenced only by a course of dealing between the parties.

## **Schedule 2—Arbitration**

### **Division 1—Preliminary**

#### **1—Selection of arbitrator**

- (1) The arbitrator is to be a person selected by the Registrar after consultation with the parties to the dispute.
- (2) If for some reason an arbitrator does not complete an arbitration, the Registrar may, after consultation with the parties, make a fresh appointment.

#### **2—Application of *Commercial Arbitration Act 1986***

The *Commercial Arbitration Act 1986* applies to an arbitration under this Act to the extent that it may operate consistently with the provisions of this Act.

## **Division 2—Parties and representation**

### **3—Parties to arbitration**

The parties to the arbitration are—

- (a) the processor concerned; and
- (b) —
  - (i) in the case of a dispute referred under Part 5—members of the negotiating group in relation to the processor;
  - (ii) in the case of a dispute referred under Part 7 or 8—the grower concerned.

### **4—Representation**

A party to an arbitration may be represented by a lawyer or, by leave of the arbitrator, another representative.

## **Division 3—Conduct of arbitration**

### **5—Arbitrator's duty to act expeditiously and to give effect to intention of Act**

- (1) An arbitrator must proceed with the arbitration as quickly as the proper investigation of the dispute, and the proper consideration of all matters relevant to the fair determination of the dispute, allow.
- (2) An arbitrator must, in arbitration proceedings, seek to give effect to the intention of this Act.

### **6—Hearings to be in private**

- (1) Arbitration proceedings must be conducted in private unless the parties agree to have the proceedings conducted in public.
- (2) An arbitrator may give directions about who may be present at arbitration proceedings conducted in private.
- (3) In giving directions under subclause (2), the arbitrator must have regard to the wishes of the parties and the need for commercial confidentiality.
- (4) A person must comply with a direction under subclause (2).

### **7—Procedure on arbitration**

- (1) An arbitrator—
  - (a) is not bound by technicalities, legal forms or rules of evidence; and
  - (b) may obtain information on matters relevant to the dispute in any way the arbitrator thinks appropriate (the arbitrator may, for example, conduct proceedings by telephone, closed circuit television or other means of communicating at a distance).
- (2) An arbitrator may require the presentation of evidence or argument in writing and may decide matters on which the arbitrator will hear oral evidence or argument.

## **8—Procedural powers of arbitrator**

- (1) An arbitrator may—
  - (a) give procedural directions;
  - (b) make orders requiring—
    - (i) the delivery of documents clarifying the issues between the parties;
    - (ii) the discovery and inspection of documents;
  - (c) sit at any time or place;
  - (d) adjourn the arbitration proceedings from time to time and from place to place;
  - (e) refer a matter to an expert for report, and accept the expert's report in evidence;
  - (f) do anything else necessary for the expeditious hearing and determination of the dispute.
- (2) An arbitrator may hear 2 or more proceedings relating to the same general subject matter together.
- (3) An arbitrator may proceed with arbitration proceedings in the absence of a party if the party has been given at least 14 days notice of the proceedings.
- (4) An arbitrator may engage a lawyer to provide advice on the conduct of the arbitration and to assist the arbitrator in drafting the award.

## **9—Power to obtain information and documents**

- (1) If an arbitrator has reason to believe that a person is in a position to give information or to produce documents that may be relevant to the dispute, the arbitrator may, by written notice—
  - (a) require the person within a period stated in the notice—
    - (i) to give the arbitrator a written statement of specified information; or
    - (ii) to produce to the arbitrator specified documents or copies of specified documents; or
  - (b) require the person to appear before the arbitrator at a specified time and place to give evidence.
- (2) A written statement must, if the arbitrator so requires, be verified by statutory declaration of the person providing the information or, if the person is a body corporate, an appropriate officer of the body corporate.
- (3) If documents are produced to an arbitrator, the arbitrator may—
  - (a) take possession of, make copies of, and take extracts from, the documents; and
  - (b) keep the documents for as long as is necessary for the purposes of the arbitration.
- (4) A person must—
  - (a) comply with a requirement of the arbitrator under subclause (1) or (2); and

- (b) if the person is required to appear as a witness before the arbitrator—comply with further requirements to make an oath or affirmation, or to answer questions.
- (5) However, a person need not give information or produce a document if—
  - (a) the information or the contents of the document are the subject of legal professional privilege, or would tend to incriminate the person of an offence; and
  - (b) the person objects to giving the information or producing the document by giving written notice of the ground of the objection to the arbitrator or, if the person is appearing as a witness before the arbitrator, by an oral statement of the ground of objection.

## **10—Confidentiality of information**

- (1) A person who gives the arbitrator information, or produces documents, may ask the arbitrator to keep the information or the contents of the documents confidential.
- (2) The arbitrator may, after considering representations from the parties, impose conditions limiting access to, or disclosure of, the information or documentary material.
- (3) A person must not contravene a condition imposed under subclause (2).

## **Division 4—Appeals**

### **11—Appeal**

- (1) An appeal lies to the Supreme Court from an award, or a decision not to make an award, on a question of law.
- (2) On an appeal, the Court may exercise one or more of the following powers:
  - (a) vary the award or decision;
  - (b) revoke the award or decision;
  - (c) make an award or decision that should have been made in the first instance;
  - (d) remit the matter to the arbitrator for further consideration or re-consideration;
  - (e) make incidental or ancillary orders (including orders for costs).
- (3) An award or decision of an arbitrator cannot be challenged or called in question except by appeal under this clause.

### **12—Costs**

The costs of an arbitration are to be borne by the parties in proportions decided by the arbitrator, and in the absence of a decision by the arbitrator, in equal proportions.