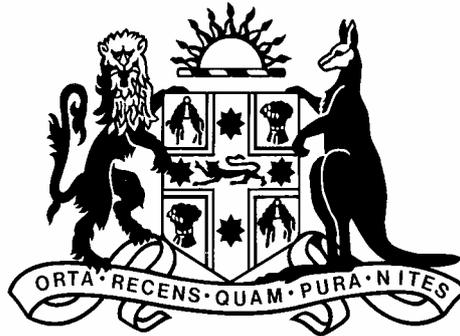


THE GOVERNMENT OF NEW SOUTH WALES



REVIEW OF THE POULTRY MEAT INDUSTRY ACT 1986

# FINAL REPORT

NSW GOVERNMENT REVIEW GROUP  
November 1999

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## ABBREVIATIONS/ACRONYMS

ACCC	Australian Consumer and Competition Commission
COAG	Council of Australian Governments
NCC	National Competition Council
PMIC	Poultry Meat Industry Committee
TPA	Trade Practices Act 1974
PNG	Processor Negotiating Group

## DEFINITIONS

The Terms of Reference require the Review Group to identify any issues of market failure, their nature and extent, which need to be, or are being addressed by the *Poultry Meat Industry Act 1986*.

‘Market failure’ is defined as the situation where freely operating markets fail to provide the most desirable and achievable outcome for society as a whole.

There are several forms of market failure:

- *Imperfect competition* is characterised by unequal bargaining power between market participants. The misuse of market power may result in inefficient resource allocation.
- *Externalities* and *spillovers* are benefits or costs associated with the activities of an individual or business which are imposed on others. The existence of externalities

indicates that market participants are either not reaping the full rewards or are not bearing the full costs of their actions. Consequently, there may be too few or too many resources devoted to the activity in question.

- *Public goods* are goods, which because they cannot be withheld from one individual without withholding them from all, must be supplied communally. An example includes national defence. Because there are no property rights for them, they are free to be utilised by anyone as and when desired. These conditions tend to lead to under-investment in these goods.
- *Imperfect information* is where market participants are not equally and fully informed. This may lead to decisions by market participants which are not in their own best interests and/or the best interests of the general community.

Special economic problems which may warrant legislative intervention include circumstances involving natural monopolies and high transaction costs.

- Significant economies of scale and scope may mean one producer or provider (*a natural monopoly*) can supply a good or service at much lower cost than many individual providers separately undertaking an activity.
- High information, negotiation or contract enforcement costs between individual buyers and sellers may render an economic activity unviable. Cooperative, non-competitive action may be required to reduce *high transaction costs*.

## EXECUTIVE SUMMARY

### Introduction

1. In NSW, the contractual obligations and behaviour between growers and processors of poultry meat is regulated by the Poultry Meat Industry Committee (PMIC). The PMIC is a statutory body representing the Crown and was established under the *Poultry Meat Industry Act 1986*.
2. The review of the *Poultry Meat Industry Act 1986* was undertaken to fulfil the NSW Government's commitments under the Competition Principles Agreement.
3. The Review Group was chaired by NSW Agriculture (Mr Geoff File) and further comprised:
  - five representatives of the poultry meat industry (Mr George Slennett, Dr Joanne Sillince, Mr John Wilkinson, Mr John Hexton and Mr John Cordina);
  - one representative of NSW Treasury (Mr David Feeney/Mr Peter Shields);
  - one representative of NSW Agriculture (Mr Scott Davenport); and
  - one representative of The Cabinet Office (Mr David Bernauer).
1. The Review Group prepared and distributed an Issues Paper in April 1998, and followed this with a program of public consultation with public forums on the Issues Paper held in Seven Hills (Sydney), Maitland and Tamworth. Over 180 submissions were received, including 32 confidential submissions from poultry meat growers.
2. The Terms of Reference for the review required an assessment of whether the public benefits of the *Poultry Meat Industry Act 1986* exceed the costs and whether the legislative objectives can only be achieved by restricting competition.
3. The Review Group concentrated on clarifying the objectives of the legislation, identifying the key restrictions within the legislation and assessing the benefits and costs of each of them. The Review Group identified avoidance of the abuse of market power by processors of growers as the primary objective of the Act and further identified the approval of agreements between growers and processors by the Poultry Meat Industry Committee (PMIC) and the determination of the standard growing fee as the primary competition restricting provisions of the Act.
4. The Review Group was required to submit this report to the Minister for Agriculture.
8. It should be noted that throughout this report particular views expressed by the two grower members of the Review Group appear as boxed sections of text.  
  
*Public Benefit Assessment Methodology*
9. The guiding principles of the Competition Principles Agreement place the onus of proof on those advocating restrictions on competition.

10. These principles have been derived from presumption and theory. The presumption is that competitive markets generally deliver greater net public benefits than restricted markets.
11. This means that in cases where an alternative option can be identified as being both effective and more pro-competitive, it is to be favoured.
12. The approach obviates the need for a formal cost-benefit analysis involving monetary quantification of costs and benefits.
13. Instead, it involves making informed judgements about the existence of costs and benefits and their relative magnitude under each option.
14. The judgements are based on evidence presented to the Review Group as well as knowledge of how markets operate. This has been the approach adopted in this review.

### **Overview of the Poultry Meat Industry**

15. Rapid adoption of new technologies and improved management practices over the last four decades has enabled the Australian poultry meat industry to achieve significant gains in production efficiency relative to close substitute commodities such as beef, lamb and pork. Chicken is also the least cost meat of all “primary cuts” in the market place.
16. The Australian poultry meat industry is characterised by having the majority of birds grown through a contract grower/processor relationship. On contract farms, processors provide the birds, feed, veterinary services, medication, animal husbandry advice, and undertake growing on company farms, processing, marketing and distribution. Contract growers provide animal management, capital inputs (land, housing and equipment), meet some variable inputs such as bedding, gas and electricity and are responsible for waste disposal.
17. Throughout Australia about eighty per cent of chickens are grown by contract growers (in NSW the figure is slightly lower) while the balance is produced by a small number of large company-owned farms. The *Poultry Meat Industry Act 1986* does not apply to company farm production, i.e., processors growing their own chickens, represents an alternative to contract growing. The main reason for processors preferring contract growing is that it frees up working capital for marketing and business growth, rather than locking funds into farm asset infrastructure.
18. NSW is the largest producer of chicken meat in Australia, followed by Victoria and Queensland and has the largest number of poultry meat farms in Australia, with approximately 319 chicken and 52 turkey farms in 1997. NSW is unique in that unlike other States where there are only two to three processors, in NSW there are at least nine. Inghams and Steggles are the major poultry meat processors in NSW, followed by firms such as Bartter, Baiada, Red Lea, Cordina, Penrith Poultry, Sunnybrand and Jancart. It should be noted that since the review has commenced Goodman Fielder Pty Ltd has sold Steggles to Bartter Pty Ltd.

19. Most integrated processor operations are established within an 80 kilometre radius of large metropolitan areas because of cost savings in relation to distribution, labour and services. Poultry growing operations are situated in close proximity to processing plants because of cost savings associated with feed transport, the transport of chicks to growing operations and the pick up of finished birds. Besides the main areas around Sydney, there is substantial poultry production in the Hunter Valley, the Central Coast, the Riverina, Tamworth and the North Coast.
20. Chicken growing sheds are highly specialised and have virtually no alternative use. In addition, they are non-portable. Because of the geographic location of processors and the requirement that their contract growers are in close proximity, many growers are limited to growing chickens for only one processor. This is especially so on the North Coast, Tamworth and the Hunter Valley.

### **The Poultry Meat industry Act 1986**

21. The principal powers and functions of the *Poultry Meat Industry Act 1986* are the establishment of the PMIC and the giving of certain powers to and requiring certain functions of this body.
22. The major functions of the PMIC are:
  - to set guidelines for the drawing up of agreements between processors and growers;
  - to approve forms of agreement if, in the opinion of the Committee, they are in accordance with those guidelines;
  - to determine prices (that is, fees paid to growers for the raising of poultry) to be paid for designated poultry; and
  - to settle by negotiation disputes between processors and growers.
8. The role of the Committee in grower/processor disputes is largely one of conciliation rather than arbitration, as there is no statutory power to enforce decisions on either party. It does not limit either party's rights at law.
9. The Act applies to designated poultry grown in a batch of 1,000 or more by a contract grower. The Act defines 'designated poultry' as a chicken of the species *Gallus gallus* which is not more than 18 weeks old; or another bird of such species or description as the Governor may, by order published in the Gazette, declare to be designated poultry, being a chicken or another bird which is being or has been grown specifically for consumption as poultry meat after processing.

### **Objectives of the Act**

25. The Review Group was required to clarify those objectives of the NSW Government which are being addressed by the *Poultry Meat Industry Act 1986*, assess the continuing appropriateness of those objectives, and consider whether the objectives of the legislation can only be achieved by restricting competition.

26. The Terms of Reference also required the Review Group to identify any issues of market failure, their nature and extent, which need to be, or are being addressed by the Act. The National Competition Policy principle relating to government intervention is that governments should only intervene in freely operating markets to correct instances of market failure or to achieve other specific social objectives.
27. The preamble to the *Poultry Meat Industry Act 1986* states that it is “An Act to constitute the Poultry Meat Industry Committee and to define its functions; to regulate and control the poultry growing industry; to repeal the *Chicken Meat Industry Act 1977*; and for other purposes.”
28. The Hansard record of the second reading speech of the bill in part states “There is an imbalance in bargaining power in the industry between growers and processors...the 1977 Act was introduced to regulate the contractual obligations between growers and processors by means of the Chicken Meat Industry Committee.”
29. The Review Group agreed that the preamble to the Act relates to matters of process and fails to clearly indicate the intended outcomes which the NSW Government aims to achieve through this legislation. The Review Group concluded that the relevant market failure which may justify intervention of this nature by the NSW Government was market power abuse by processors of growers.
30. The Review Group accepted that the *Trade Practices Act 1974* is in place to address market power abuse. Some members of the Review Group expressed uncertainty and concern, however, in relation to the effectiveness of the *Trade Practices Act 1974* in addressing the concerns of NSW poultry growers. The Review Group was also concerned about the reasonableness of any sudden movement away from the current situation where the *Poultry Meat Industry Act 1986* is in place, to one where growers were solely reliant on the *Trade Practices Act 1974*, and more particularly on the recent untested amendments to that Act relating to unconscionable conduct.
31. The Review Group concluded, therefore, that should the NSW Government continue with legislation specific to the NSW poultry industry, then the objectives of that legislation should relate to addressing market power abuse by processors which is not able to be effectively addressed by the *Trade Practices Act 1974*. By avoiding market power abuse by processors of poultry growers, efficient levels of investment should be achieved in areas such as adoption of new technology and disease control.

### **Restrictions on Competition**

32. The Terms of Reference required the Review Group to identify any restrictions on competition in the *Poultry Meat Industry Act 1986*, analyse the likely effect of these restrictions on the economy generally and weigh the costs and benefits of the restrictions. The guiding principle of the review was that the Act should not restrict competition unless it could be demonstrated that:
  - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
  - (b) the objectives of the legislation could only be achieved by restricting competition.

33. The Review Group identified the approval of agreements between growers and processors by the PMIC and the determination of the standard growing fee as the primary competition restricting provisions of the Act.
34. Under the Act, a processor may not process designated poultry grown in a batch of 1,000 or more unless the poultry were grown under an approved written agreement, or were grown at a farm operated by a processor.
35. The PMIC has established *Guidelines for Agreements* between growers and processors. The Committee approves agreements which conform to the Guidelines and are supported by a majority of growers contracted to the particular processor.
36. The PMIC is also charged with determining the fees paid to growers for the raising of designated poultry. The Committee applies a 'model farm' concept to determine an indicative growing fee which is equivalent to the average total cost of production (see Appendix 5).
37. In addition to the parameters of the model being reviewed every three years, the model is updated every six months according to changes in the Consumer Price Index and other costs which directly influence growing costs in order to fix a model (or standard) fee for the forthcoming six-monthly period. Once the 'model fee' is determined by the Committee, each processor may negotiate with its growers a number of adjustments reflecting market conditions and throughput. The fee paid to growers is a result of altering the 'model fee' by these adjustments. These adjustments are ratified by the Committee or, if in dispute, can be taken to the Committee for resolution. Administratively determined adjustments for market conditions and throughput are agreed between each processor and its growers and automatically approved by the PMIC if within a certain percentage of the cost model. If beyond this percentage then the processor only must demonstrate that there had been no abuse of market power in arriving at that level.
38. Grower returns may be further influenced by a pooling system used to rank individual growers according to efficiency criteria (eg. feed conversion ratio and mortality). An associated efficiency rating system, whereby individual growers are assigned an efficiency score per batch, also determines payments or penalties.

### *How is Competition Restricted ?*

#### *Contract Agreements*

39. The requirement to have contract agreements approved by the PMIC may restrict competition to the extent that certain contracts are disallowed, preventing processors and growers entering into alternative, possibly more flexible, growing arrangements more suited to meeting each others requirements and local conditions.
40. While there may be potential benefits from the PMIC's involvement in contract approval, a concern of the majority of the Review Group is that growers have largely relinquished to the grower members of PMIC, their responsibility for ensuring contracts are appropriate to their needs. Consequently, a more generic approach to contract

development has occurred in the NSW poultry industry relative to what might otherwise be the case. The general effect has been the development of contracts which fail to fully address the range of commercial risks faced by growers, leaving their business operations open to an increased level of intervention by processors. For example, growers expressed their concern over areas such as pick-up times, trial feed batches, and variation in the quality of day old chicks. Ideally these issues should be addressed within contract agreements.

The grower representatives on the Review Group acknowledge that the current legislation provides so little effective countervailing power to growers as to be inadequate to force these critical issues to be considered within contracts.

41. To the extent that the role of the PMIC in overseeing contracts between processors and growers has acted as a disincentive to individual negotiations between growers and processors, then a further effect of the PMIC's contract approval role may be to stifle the emergence of more efficient vertically integrated or cooperative grower/processor arrangements.

The grower representatives on the Review Group noted, however, that there were processor negotiating groups currently operating within the current Act, and that the levels of cooperation were a direct function of the level of effective countervailing power and personal relations within the processor/grower groups. The PMIC was called upon to assist in the management of disputes caused by these direct negotiations.

#### *Setting Standard Growing Fees*

42. The power of the PMIC to determine an indicative industry growing fee to be used by all growers and processors as a starting point for fee negotiations may restrict competition by limiting the range of prices at which growers are prepared to offer growing services. The assumption underlying the use of the model farm concept to determine an indicative industry growing fee is that the average cost of production for the whole industry should be used as the basis for setting fees paid to individual growers. However, because of the different markets that processors cater for, their different productivity criteria and the different production systems of their contract growers, production costs of growers may vary across processors.

The grower representatives on the Review Group argued that production costs do not vary between different processor groups. There should be analytical evidence, therefore, presented by the Review Group to demonstrate the argument above.

43. Administratively determined grower fees which are set initially on the basis of an average industry cost model will only partially mimic the range of prices which would otherwise apply and therefore will be less effective than open price competition in rewarding relative differences in efficiency, not only between growers, but between processors as well. While the pooling arrangement takes into account efficiency differences between growers to some degree, it is recognised that it does not impact on the total growing fee paid by a processor to that processor's growers given that each processor pays a different fee.
44. While the effects of such an arrangement may be to increase grower returns on an industry wide basis in response to instances of market failure (market power abuse by

processors), growers may be over compensated. This may occur because market power abuse (to the extent that it would be significant) is likely at any point in time to be limited to a proportion of the industry, rather than the entire industry, and is likely to be sporadic rather than continuous. It should be noted, however, that the extent of any over compensation will be constrained to that level of grower fee, at which point, processors consider it more beneficial to invest in their own growing facilities.

45. Consequently, there are two potential efficiency effects. First, through standardisation of contracts and fees efficient growers may be penalised, while less efficient growers may be rewarded. Second, to the extent that these arrangements provide growers with countervailing power in excess of that required to address instances of market power abuse by processors, it follows that there will be an income transfer from consumers and processors to growers, with attendant efficiency losses. These efficiency losses may be in the form of resources being attracted into/or maintained in the poultry industry at the expense of other sectors of the economy, with consequent reductions in economic growth.

The grower representatives on the Review Group believed that the critical issue is whether the range of growing fees at which growers are prepared to offer their services under the current legislative arrangements is appropriate. No analysis has been carried out of the 'real' versus the 'visible' costs of production and the extent of countervailing power which growers possess to negotiate a suitable price that accurately reflects the former. In this context, real costs refers to the various forms of investment required to maintain ongoing viability of a farm, such as investments in biosecurity measures.

The grower representatives on the Review Group were of the view that the issue of growers being over compensated by the current arrangements had not been proven, and even it were true, then no public benefit test had been undertaken on whether that compensation resulted in a net public benefit.

### Options Considered by the Review Group

46. On the basis of submissions received, and its own considerations, the Review Group agreed to assess five possible alternative means of achieving the objectives of the legislation. These included:

#### Legislative Options

- (i) Option 1- the status quo, but with alterations to reflect the current operation of the Act and to provide exemption from the *Trade Practices Act 1974*.
- (ii) Option 2- increased powers provided to the PMIC.
- (iii) Option 3- transferring the most competition restricting powers of the current PMIC (contract agreements and fee setting) to processor negotiating groups.

#### Non-legislative Options

- (iv) Option 4 - deregulation - authorisation by the ACCC.
- (v) Option 5 - deregulation - other.

47. Option 1 represents the current arrangements. Option 2 is the current arrangements, but with strengthened powers provided to the PMIC. Option 3 involves delegating, through legislation, the more significant powers of the current PMIC to processor negotiating groups.

48. Options 4 and 5 involve repeal of the legislation. Option 4 is where industry participants seek ACCC authorisation of collective negotiations, i.e., processor negotiating groups, which is what the major processors and their respective growers have done in South Australia and Tasmania. Option 5 includes various non-regulatory options such as growers individually negotiating with processors, the voluntary formation of producer groups and the increased integration of processing and growing activities.

#### *Option 1 - Maintaining the Current Legislation*

49. This option involves retention of the current legislation with all of its existing provisions. The original intent of these arrangements was to provide poultry producers with countervailing market power against poultry processors. Centralised contract approval and fee setting, however, may have a number of adverse effects which may detract from resource use efficiency and industry competitiveness.
50. For example, a process whereby an industry cost model is used to administratively set an industry wide growing fee (with administratively determined adjustments for market conditions and throughput) for the purpose of countering instances of market power abuse may overcompensate growers with consequent efficiency costs.
51. Furthermore, by introducing administrative ‘rigidities’ into price signals and contractual arrangements, growers may be insulated from market developments, resulting in delayed grower adjustment to changes in the business environment, and therefore an increased risk of business failure and higher economic and social costs.

The grower representatives were of the view that even without the present legislative arrangements, the nature of their business and the processor’s ownership and relationship with growers, meant that price signals are not available to growers.

52. In addition to the possible impact of the *Poultry Meat Industry Act 1986* on the efficient allocation of resources and business competitiveness, the Review Group considered it appropriate to consider the effect of the legislation under review to investment stability in the poultry industry, regional development in NSW, the level of investment by producers in disease control and transaction costs.

#### *Investment Stability*

53. Proponents of the current arrangements argue that centralised contract approval and fee setting provide benefits in the form of a more stable investment environment because growers have greater confidence in the prices they will receive and financiers are more likely to offer long term finance. The natural extension of the argument that regulated price setting provides for a more stable investment environment is that governments should similarly regulate prices throughout the economy. Under National Competition Policy government intervention to promote investment stability in a particular industry requires evidence of market failure in the form of under-investment. In the current review no evidence was available to suggest that credit markets would fail in the absence of price and contract regulation to provide an appropriate level of finance to the poultry meat industry. The nature of this proposition favours a conclusion that investment stability is best viewed as an ‘incidental’ rather than a primary benefit or objective of the *Poultry Meat Industry Act 1986*.

The grower representatives on the Review Group disagree with this argument on the basis that it implies that all industries exhibit similar structural characteristics and operate under identical conditions of market power and therefore should be treated identically. The view of the grower representatives was that investment stability might just as easily be fundamental and that this was unable to be determined because there has been no real analysis. Whether or not it is incidental or fundamental, the grower representatives believe that the net effect of the Act has included the development of some small amount of investment stability which is nonetheless offset by the instability of supply (throughput) of birds.

54. Nevertheless, the proposition that regulated price setting and contract approval provides investment stability may be questioned. For example, while these arrangements may provide a degree of income stability, which may be viewed favourably by lenders, regulated prices have also resulted in industries becoming less competitive, losing market share, and therefore becoming less attractive to commercial lenders. In the case of the NSW poultry industry, the continuation of regulated price setting and contract approval therefore raises the possibility of NSW growers becoming less competitive and losing market share, either to processors or to producers in other states or overseas.

In response to these arguments the grower representatives on the Review Group were of the view that NSW growers are highly competitive as reflected in the increasing trend in poultry consumption relative to other meats.

The grower representatives on the Review Group also expressed the view that competitiveness of NSW growers under the Poultry Meat Industry Act should also take account of the lower growing fees paid in NSW relative to the fees in five other states versus the retail prices in each state. In short there is no evidence that regulated price setting and contract approval has resulted in this industry being less competitive as there has been no objective analysis, only theory.

55. Regulated prices may also have the effect of insulating financiers from the true economic conditions and prospects of an industry. Consequently, financiers may view a regulated industry with a degree of over-confidence and producers may be encouraged to over-capitalise their business resulting in increased debt servicing problems and business failure. Effectively, growers are insulated from market signals leading to delayed farm business responses, and therefore, increased adjustment costs.

The grower representatives on the Review Group made the following points in response to these arguments:

- growers are insulated from real market signals in any event as they have no real contact with the market other than that provided to them by the processor. There is for example, an absence of a public auction system to allow open market feedback to the growers; and
- the processor has complete control over the number of birds placed on a growers farm in a year, and may terminate a growers contract at any time for many possible reasons within contract requirements. Financiers are aware of this and are therefore unlikely to overvalue the growers business for this reason.

56. A further source of investment instability associated with regulated industries relates to resources being drawn, artificially, into the regulated industry at the expense of other local input competing industries. Consequently, any investment stability benefits received by poultry growers, will be offset by investment instability which is created in other industries.

The grower representatives on the Review Group were of the view that when examining investment stability that consideration should be given to throughput instability in the industry and the need for some

small level of stability to offset short duration contracts and considerable investment into highly specialised housing and equipment.

57. The majority of the Review Group therefore concluded that investment stability benefits provided to the poultry industry will be offset by increased adjustment costs in the regulated industry, and by costs imposed on input competing industries.

The grower representatives on the Review Group were of the view that some small level of investment stability is needed to be provided to the industry to offset the throughput instability, short duration contracts and considerable investment into highly specialised housing and equipment.

### *Regional development*

58. In relation to regional development the Review Group identified two opposing arguments. The first is that income transfers to poultry producers generate positive regional multiplier effects. Alternatively, there are strong efficiency and equity arguments for not using regulated commodity prices to encourage regional development. For example:

- it provides a competitive advantage to one regional industry over another, such that the net effect on development in a particular region is negligible, or negative;
- it provides a disproportionate competitive advantage to those regions with most poultry producers, such that the net effect on regional development, across regions, is again negligible or negative; and
- it puts governments in the position of 'picking winners', rather than allowing this to occur through market processes, with not only the above mentioned efficiency costs, but further public costs as regional adjustment problems occur when either, the assisted industry becomes less competitive, or when government assistance is withdrawn.

45. This form of regional support is also inequitable, not only because support is provided only to certain industries and certain regions, but because poultry processors and consumers, rather than taxpayers as a whole, are required to fund the arrangement.

The grower representatives on the Review Group were of the view that the regional development argument rests on the assumption that the Act actually increases returns to growers, however, this had not been demonstrated. Anecdotally the evidence that there is no such transfer lies in the fact that processors continue to use contract growers rather than preferentially producing birds on their own farms, even in the face of possible economies of scale. The regional development argument put by growers was that any profit made tended to stay in the regional area rather than being transferred to a capital city head office; and local contractors and suppliers were generally used in preference to capital city suppliers.

60. It follows that less distortionary and more equitable approaches to regional development will involve taxpayers generally, rather than poultry processors and consumers, funding services which address relevant forms of market failure, such as regional communities having poor information and skills in relation to local development opportunities. Increasingly, governments are also choosing to address regional development by focussing on social justice issues, such as access by regional communities to government services.

61. A further counter argument to the proposition that the current arrangements promote regional development is one put forward by processors. They argue that in the absence of the current arrangements there would be a significant increase in the size of growing facilities in order to capture scale economies, and further, that these facilities are more likely to be located outside of the Sydney basin, in regional locations, due to less restrictive environmental requirements and cheaper land prices. This is supported by recent changes with expanding growing facilities evident in the Goulburn region.

The grower representatives on the Review Group countered that it is the processors who determine the location of farms, and who allow farms of a certain size to be built. It is the processors who have argued repeatedly that farms must be within one hundred kilometres to a processing plant, which has largely precluded the development of farms outside the Sydney Basin except where they have chosen to build a country based processing plant. In addition there must be adequate return on investment to allow for further investment, and it is these returns (even in the face of extensive industry financing) that is hampering further investment on a large scale.

62. The majority of the Review Group concluded that regional development benefits provided by the *Poultry Meat Industry Act 1986* to a particular industry or region could be offset by matching costs imposed on other regional industries and regions. It was further concluded that there are other more effective and more equitable means of addressing the regional development concerns of government.

#### *Investment in Disease Control*

63. The Review Group also identified two opposing arguments which are relevant to an assessment of the impact of the *Poultry Meat Industry Act 1986* on the incidence of disease in the NSW poultry industry. The first is that to the extent that higher growing fees are achieved through the operation of the current legislative arrangements, investments in disease control will be more affordable for poultry producers. The counter argument is that the use of regulated commodity prices to address disease concerns is inefficient on the basis that:

- any benefits from increased on-farm investments in disease control may be offset by less efficient producers being maintained in the industry for longer than otherwise. The reduced efficiency and increased adjustment costs faced by these producers may result in an industry with a greater proportion of producers less able to commit resources to disease control; and
- such arrangements are ineffective in targeting disease control because there is no requirement for producers to spend any of the increased returns on disease control measures.

The grower representatives on the Review Group were of the view that evidence should be presented that less efficient producers are being maintained in the industry for longer than otherwise as a result of the activities of the Act, given that as a general rule in some cases the least efficient producers in a given processor group are achieving better farming performance than the average growers of only five years ago.

In addition, the grower representatives on the Review Group were of the view that there is no evidence of “increased returns” demonstrated and that there must be an adequate return on investment to allow for farm infrastructure development.

64. The argument that financial incentives, whether they be in the form of producer price subsidies or concessional finance, are required to achieve socially desirable levels of disease control also assumes that financial markets will fail to provide finance for on-farm investments which enhance the long term viability and profitability of the farm enterprise. There is little evidence to suggest, however, that there is significant 'failure' in credit markets, and consequently, business subsidies for the purpose of disease control could theoretically represent 'wind-fall' gains to individuals who could have otherwise accessed finance from commercial sources.
65. It should also be noted that industry assistance is not provided to any other rural industry on the basis of making disease control more affordable. More direct forms of assistance and intervention are, however, provided for in Commonwealth and State animal and plant health legislation and cost sharing arrangements. However, these are currently under review.

The grower representatives on the Review Group pointed out, however, that because of farmer interdependence in relation to disease control issues meant that the farmer who chose to cut costs to excess and ignore disease control costs (or for that matter animal welfare or any other "social" cost) effectively put the whole industry at risk. The Review Group had not assessed the effect of the minimum farm standard that was an integral part of the Act, and which tended to mitigate against such inappropriate behaviour.

The grower representatives on the Review Group also noted that there was no evidence of windfall gains in the absence of objective analysis and it was just as valid to assert that no such windfall gain existed.

66. While the above arguments question the effectiveness of the current arrangements in addressing biosecurity, the Review Group recognised the importance of biosecurity in the poultry growing industry. The Review Group considered that this issue was most effectively addressed under new arrangements (as discussed in Option 3) which require specific biosecurity provisions to be developed by grower and processor groups and formally recognised as a significant production cost. The grower representatives on the Review Group pointed out that appropriate systems to ensure that this actually happens will need to be developed under Option 3.

#### *Transaction costs*

67. Proponents of the current arrangements argue that a further incidental benefit of the centralised approach to fee setting and contract development is that information and transaction costs may be reduced. Transaction costs include the costs of drawing up contracts, the costs of negotiating contracts as well as the costs of monitoring and enforcing contract conditions.
68. While there may be certain savings in transactions costs under the current arrangements, these arrangements are not costless. Furthermore, to the extent that the centralised approach to fee setting and contract approval gives rise to an increased level of subsequent fee and contract disputation between growers and processors, information and transaction costs may be increased.
69. In support of the proposition that the current centralised arrangement gives rise to increased levels of disputation between growers and processors, grower representatives of the Review Group offered a significant amount of anecdotal evidence relating to

‘unfair’ treatment of growers by processors under the current arrangements, and significant ongoing disputation in relation to issues such as batch and feed quality, pick-up times by processors and the constant demands by processors for shed and equipment up-grading.

The grower representatives on the Review Group were of the view that evidence should be presented that the centralised approach to fee setting and contract approval gives rise to an increased level of subsequent fee and contract disputation. The grower representatives stated that analysis of the level of dispute prior to and after the introduction of the Act suggests otherwise.

The grower representatives on the Review Group were of the view that the Act provides a healthy, negotiation method of dealing with any of these issues that would otherwise either have to go to court for resolution (with concurrent increases in transaction costs) or simply be “worn” by the grower (with an associated transfer of resources from grower to processor). In addition the disputes mentioned regarding batch and feed quality, pick-up times by processors and shed and equipment upgrades were beyond the status or the intent of the current Act. These are therefore not relevant to the current analysis of the Act other than to demonstrate the “background” level of disputation that the Act has reduced in the areas of contract negotiation and fee setting.

70. Savings in transaction costs do not, however, automatically lead to the conclusion that government intervention is warranted. For example, non-legislative cooperative arrangements may similarly reduce transaction costs. The grower representatives on the Review Group pointed out, however, that cooperative arrangements may breach the *Trade Practices Act 1974*.
71. The majority of the Review Group concluded that information and transaction cost saving associated with centralised fee setting and contract approval under the current arrangements will be largely offset by information and transaction costs incurred by producers and processors in subsequent disputations about matters not adequately addressed in existing contracts. It was further concluded that savings in transaction costs could nevertheless be achieved by better contractual arrangements which are less restrictive of competition, as discussed in Option 3 (see paragraph 6.55).

The grower representatives on the Review Group were of the view that in the absence of any objective analysis, no such conclusion can be reached. It would be equally likely that there would be a domino effect forcing fees below the cost of production by processors by sequential intimidation of poorly informed processor negotiating groups (who are nonetheless good farmers). Again, objective analysis would be required.

### *Option 2 - Maintaining the Legislation and Strengthening the Powers of the PMIC*

72. Proponents of this option argue that strengthening the Act to provide the PMIC with additional powers in relation to arbitration, conciliation and other forms of dispute resolution, and providing for statutory power to enforce decisions, would promote more harmonious relationships between growers and processors. They argue that where industry participants cannot resolve disputes they would be threatened with an independent body imposing a binding decision which neither party is likely to be fully satisfied with. Therefore, growers and processors would be encouraged to work together.

The grower representatives on the Review Group were supportive of including arbitral provisions in any future countervailing power legislation because of a direct linear relationship between the strength of

the legislation in providing countervailing power to growers between states and the average reinvestment in new farms, with the resultant increase in economies of scale and increased industry efficiency.

73. It could alternatively be argued that, by strengthening the legislation, all of the adverse effects of Option 1 would be maintained, and possibly increased. Consequently, there could be:
- an increased potential for income transfers to growers with associated efficiency costs;
  - less scope for flexibility with respect to contractual arrangements between growers and processors;
  - the increased powers of the PMIC would act as a further disincentive for contracts developed under the oversight of the PMIC to fully address the range of commercial risks faced by growers; and
  - it would further ‘sour’ business relationships between growers and processors which would not be in the industry’s interests in terms of promoting industry efficiency.

### *Option 3 - Fees and Contract Arrangements Negotiated by Processor Negotiating Groups*

74. This option involves the collective negotiation of fees and other contract conditions at the individual processor negotiating group (PNG) level.
75. The conduct of PNGs would be governed by a *Code of Practice for Contract Negotiations* established as a regulation under the Act. The Code would contain provisions relating to:
- the composition of PNGs including their formation, discontinuation and reinstatement;
  - appointment of delegates to PNGs;
  - election of grower delegates;
  - the functions of PNGs;
  - procedures relating to the calling of PNG meetings;
  - procedures relating to agreed resolutions and unresolved matters relating to all growers and to individual growers;
  - dispute resolution procedures; and
  - non-participating growers.
60. Contracts developed by PNGs would be required to comply with *Minimum Contract Guidelines* which would be established as a regulation under the Act.
61. Growers would have the ability to ‘opt-out’ of collective negotiations, however, the *Code of Practice for Contract Negotiations* would contain provisions which govern opting out.
62. An industry body of similar composition to the PMIC would be maintained to facilitate the operation of PNGs. The new overseeing body’s functions would be to:

- assist in the establishment of PNGs;
- ensure appropriate implementation of the *Code of Practice for Contract Negotiations* governing the conduct of PNGs and the *Minimum Contract Guidelines* for contract agreements developed by PNGs;
- act as a mediator or appoint a mediator/arbitrator in PNG disputes relating to the *Code of Practice for Contract Negotiations* with the authority to refer a breach of the Code of Practice or *Minimum Contract Guidelines* to the Australian Competition and Consumer Commission, or other government bodies.
- act as an industry forum for the dissemination of information;
- advise the Minister on matters relating to the poultry meat industry referred to it by the Minister; and
- monitor the effectiveness of the new arrangements.

79. The negotiation of growing fees and contract terms at the individual processor negotiating group level would allow contractual arrangements to develop which more closely reflect the local conditions faced by both growers and processors. For example, both growers and processors across the State face different cost structures, and in the case of processors, face differing markets and product returns. The negotiation of fees and contracts at the processor negotiating group level would therefore enable contracts to reflect these differences and thereby minimise any adverse efficiency effects of the current legislation.

The grower representatives on the Review Group noted that this is possible under the current Act by negotiated agreement on “discounts” to the fee between a processor and grower group. In addition the growers were of the opinion that the proposal would allow those processor/grower groups with fully depreciated farms to effectively undercut those with high standards of housing, equipment and biosecurity. This could give rise to a similar situation to that which exists in the egg industry and discriminates against coverage of “social” costs such as biosecurity and animal welfare.

80. An issue of concern to growers is the possible level of processor coercion and intimidation which they may be subject to when there is no requirement for agreements to be approved by a central body. The ability to opt out of collective arrangements is an issue which growers see as of prime importance in this regard. Option 3 has therefore been designed to provide grower protection against these forms of anti-competitive activity by requiring the upper tier body to develop a Code of Practice which covers the issue of growers opting out of collective negotiations.

81. Growers who opt-out of collective negotiations would continue to have access to certain dispute resolution procedures through the overseeing body and they would continue to contribute to the financing of the overseeing body. Having opted out of a PNG a grower could only return once the contract they had entered into expired. Instances of processors coercing growers to opt out could also be referred by the overseeing body to the ACCC.

The grower representatives on the Review Group pointed out that the ACCC must have evidence on which to mount prosecutions and that this evidence is sometimes hard to find. It also takes time, and by necessity takes a “big stick” approach that may not be conducive to future relationships.

82. Under a less centralised approach to fee setting and contract development, arguably information and transaction costs may increase. Under Option 3, however, these costs

may be substantially reduced by enabling collective negotiation between growers and their individual processor and by providing growers with more effective dispute resolution procedures. Furthermore, by requiring growers to be more closely involved in contract negotiations, the level of ongoing disputation over contract provisions, such as those relating to batch and feed quality, would be substantially reduced.

83. The various provisions of Option 3 are designed to more effectively address potential market power abuse by processors, while at the same time imposing lesser regulatory restrictions on competition. The option also provides growers with increased and more effective regulatory protection through:

- the mandatory Minimum Contract Guidelines;
- the mandatory Code of Practice with respect to processor/grower negotiations; and
- more comprehensive dispute resolution procedures.

The grower representatives on the Review Group expressed concern that the presence of the listed items was substantially irrelevant and that it was the content of the suggested documents that would be the determinant of whether the scheme would be viable. In particular the grower representatives observe Codes of Practices failing in many industries in the absence of strong punitive provisions for failure to follow the Codes. Growers thus reserve judgement on Option 3 unless and until such Codes are finalised.

84. These requirements are further reinforced by the threat that the overseeing body may refer breaches of the Guidelines or the Code to the ACCC. In addition, growers would be authorised to engage in collective negotiation. Under the current Act, both growers and processors are likely to be in breach of the *Trade Practices Act 1974*.

The grower representatives on the Review Group pointed out that any legislation, even if an update of the "status quo" option, would need to recognise the *Trade Practices Act 1974* as required by National Competition Policy. This would not be unique to any one legislative scenario.

#### *Option 4 - Deregulation - Authorisation by the ACCC*

85. The key difference between authorisation and Option 3 is that authorisation, as implemented in other States, does not provide for an upper tier body such as the PMIC. Another difference is that, unlike authorisation, Option 3 has no sunset clause.

86. The role of the overseeing body in Option 3 is to assist in the establishment of PNGs, to facilitate a smooth transition to fee and contract negotiations occurring at the PNG level, and to act as an independent body which is able to refer possible abuses of market power to the ACCC without fear of recriminatory behaviour by processors. Importantly, given the significant change in how fees and contracts would be negotiated in Option 3, the overseeing body is also required to report to the Minister on the effectiveness of the arrangements. Option 3 therefore maintains an overseeing body, not only to facilitate the PNG approach, but to provide growers with further protection against potential market power abuse while this change to less centralised fee setting/contract approval occurs.

87. If authorisation could provide sufficient protection to poultry growers against the misuse of market power by processors, there is the potential for these arrangements to

be similar in effect to Option 3. Authorisation may, however, involve fewer administrative costs, but higher transaction costs given that such arrangements would need to be re-established on a regular basis and a number of authorisations may be required to provide full industry coverage. The Review Group was unanimous, however, in their concern that an immediate shift to authorisation may impose significant adjustment costs on a proportion of growers and that growers may have insufficient time to develop the level of negotiating skills required.

The grower representatives on the Review Group also noted that while the ACCC may be able to act on evidence of market power issues, it is not able to address other forms of market failure such as imperfect information and externalities.

### *Option 5 - Deregulation - Other*

88. As with Option 4 (authorisation), the Review Group concluded that complete deregulation may result in unnecessarily high adjustment costs. These options would require considerable re-skilling and additional investment by growers and processors.
89. In relation to the option of growers vertically integrating into the processing sector, the ACCC states that while growers have considerable expertise in chicken growing, their capacity to integrate downstream or upstream to enhance their market position appears very limited.

### **Overall Assessment**

90. The Review Group identified the objectives of the Act but found that they related to matters of process, such as establishing the PMIC, rather than clearly identifying the intended outcomes of the NSW Government.
91. The Review Group agreed that the primary market failure which the Act is intended to address is the avoidance of market power abuse by poultry processors of poultry growers. It was therefore agreed that this should be explicitly stated as the primary objective of the current or any future Act. By avoiding market power abuse by processors of poultry growers, through provisions which facilitate collective grower negotiation and improve the level of information available to growers, efficient levels of investment should be achieved in areas such as the adoption of new technology and disease control.

***Recommendation 1.*** *It is recommended by the Review Group that in the event of legislation specific to the NSW poultry industry being continued subsequent to this review, that the objectives of that legislation be changed from those which currently apply, to be an explicit statement of the outcomes intended to be achieved by the NSW Government and that it include the words “to avoid market power abuse by processors of poultry growers.”*

The grower representatives on the Review Group were of the opinion that the explicit statement of outcomes intended to be achieved by the NSW Government be broadened from those recommended above to include the words “to avoid market abuse by processors of poultry growers and to assist in addressing other forms of market failure such as biosecurity and imperfect information.”

92. The majority of the Review Group was unable to support the current legislation (and Option 2 involving increased powers to the PMIC) on the basis that the industry wide contract approval and fee setting powers of the PMIC are unnecessarily restrictive of competition for the purpose of meeting the objective of the Act. The setting of grower fees with reference to a single ‘farm model’ fails to fully reflect differences in efficiency between growers. The masking of price signals in this way may not fully reward the most efficient growers and may overcompensate the least efficient growers.
93. Consequently, less efficient growers may be retained in the industry for longer than would otherwise be the case. The point where these growers become non-viable may therefore be postponed, at which time they will have higher levels of debt, lower equity, will face greater difficulties in adjusting from the industry and social costs associated with industry adjustment are increased.

The grower representatives on the Review Group were of the view that there is a lack of data to support the argument that the current arrangements are unnecessarily restrictive of competition and fail to fully reflect differences in efficiency between growers. They also were of the view that debt ratios have less to do with the efficiency of the grower (as they might have in other industries) due to the habit of more efficient family farmers to spend (and thus increase their debt ratios) on new equipment, biosecurity, animal welfare and other social costs. There is also an age factor due to increasing industry capitalisation and land costs. Recent entrants (usually younger better educated growers) almost always have a higher debt ratio.

The grower representatives on the Review Group were also unable to support the current legislation, but not for the reasons given above. The reasons why the grower representatives on the Review Group do not support the current legislation include:

- the lack of penalties (enforcement) -there is still evidence of individual cases of inappropriate behaviour; and
- the ability of processors to influence the outcome of the pooling system. Processors can alter feed formulations and neither provide this information to the growers nor in all cases correct the pool to reflect this. Age of pick up can also alter a grower’s position in the pool if not corrected for.

94. The majority of the Review Group was particularly concerned that by establishing the PMIC as the sole ‘approver’ of contracts between growers and processors in NSW, that the current legislation has substantially shifted responsibility for contract development from growers to the PMIC. Consequently, growers are poorly placed to ensure contracts adequately address the commercial risks they face which has in turn led to the situation where growers interpret certain actions of processors as market power abuse (eg. batch quality issues). Instead, these actions by processors, during contract periods, reflect a failure on the part of growers to ensure their contracts are comprehensive in this regard.
95. Furthermore, the transfer of responsibility from growers to the PMIC for contract development appears to have acted as a disincentive to closer interaction by processors and growers which has resulted in an industry characterised by extremely poor grower/processor relations which in turn detracts from industry efficiency.

The grower representatives on the Review Group do not support the contention that the current arrangements have substantially shifted responsibility for contract development from growers to the PMIC and the consequent suggestion that this has led to growers being poorly placed to ensure contracts adequately address the commercial risks they face. This is because the current PMIC is only involved to the extent proposed in Option 3, that is, it sets minimum contract guidelines and allows growers to negotiate with their processors to the extent that they are able to reach a new contract. Critically, the

PMIC acts as an oversight body to ensure that procedures are carried out properly and that there has been minimal market power abuse in negotiation. It also acts to provide critical market information. Growers are of the view that there appears to be little analysis in this report of the differences between the wording of the current Act versus a broader analysis of the Act, regulations, guidelines and behaviours that have resulted from the current Act..

The grower representatives on the Review Group were of the view that the poor relationships between participants in the industry were not a result of the current legislative arrangements and that because other possible reasons for the poor relationships have not been given, the conclusion that the current legislative arrangements are responsible cannot be reasonably considered correct.

96. While the majority of the Review Group acknowledged the potential for processors to abuse their market power, it was not presented with any evidence which cast significant doubt over the effectiveness of trade practices legislation in addressing this problem. The views of the ACCC expressed to the Review Group were that the poultry industry in NSW did not have characteristics which made it more or less susceptible to market power abuse than other industries, and that authorisation under the *Trade Practices Act 1974* is the ACCC's preferred approach to addressing imbalances of market power.

The grower representatives on the Review Group expressed the view that while the ACCC could deal with some cases of market power abuse it could do so only on the basis of (usually documentary) evidence, which is difficult to obtain. In addition, the grower representatives understand that the ACCC may not prosecute "small" cases such as that which might be seen in likely cases. In any event, the ACCC has no power to address other forms of market failure.

97. While the majority of the Review Group agreed that authorisation may provide an efficient outcome, they were also concerned about the transaction costs associated with the authorisation process and the level of industry disruption, and hence public costs, which may be associated with changing too quickly from a highly regulated environment to one involving minimal or no regulation. The majority of the Review Group were of the view that having operated in a highly regulated arrangement growers may be poorly placed to immediately adapt to a more commercial environment. Consequently, a move to less restrictive legislation, is seen as desirable in terms of providing for a more orderly adjustment process.

The grower representatives on the Review Group noted that they were "at the coalface" daily and agreed that the level of disruption is likely to be significant, and the grower representatives did raise possible financial and other assistance during any transition period. Growers did not necessarily agree that a move to "less restrictive legislation" is the most desirable outcome (see also previous comments regarding proposed Option 3).

98. The majority of the Review Group concluded that authorisation or the formation of cooperatives were options which may well be appropriate in the future, however, growers require time to adapt to less regulatory arrangements, particularly in terms of the development of negotiating skills.

The grower representatives on the Review Group informed the Review Group that they had been advised that the formation of cooperatives would require authorisation, and that authorisation does not appear to be a viable option owing to recent experiences with the South Australian authorisations.

99. The majority of the Review Group therefore favoured Option 3 for the NSW poultry meat industry whereby contract negotiation and fee setting is undertaken by individual processor negotiating groups. This option maintains a body similar to the PMIC to oversight the operation of PNGs.
100. The majority of the Review Group agreed that this body should be fully funded by those sectors of the industry represented on it.
101. The majority of the Review Group concluded that the proposed arrangement substantially reduces the potential for efficiency costs by transferring responsibility for contract negotiation and fee setting to individual grower/processor negotiating groups, rather than these being set on an industry-wide basis. The new arrangement will encourage contractual arrangements between processors and growers more suited to their local industry conditions and individual circumstances and will provide scope to better reward relative differences in efficiency among both processors and growers.

The grower representatives on the Review Group noted the success of the proposed arrangement will be entirely and absolutely dependent on the content and detail of the Code of Practice for Contract Negotiations and the Minimum Contract Guidelines. Growers are willing to discuss and develop these guidelines in good faith but will not support the proposed Option 3 until these guidelines are completed.

102. Because the arrangements under Option 3 involve collective negotiations at the individual processor level, it will be necessary to include in the new legislation explicit exemption from the *Trade Practices Act 1974* authorising this conduct.
103. Given that the current legislation has effectively transferred responsibility for contract negotiations from growers to the PMIC, under the preferred new arrangements whereby collective negotiation of fees and other contract conditions would occur at the individual processor negotiating group level, growers may initially be poorly placed in terms of their negotiating skills to negotiate directly with processors. The Review Group therefore agreed that it would be appropriate for the NSW Government to fund, for a three year period, independent consultants to assess the growing costs for growers in each of the processor negotiating groups. This would provide growers with a reference point from which they may wish to negotiate. The Review Group also agreed to conduct an information forum on the operation of the new legislative arrangements for the banking sector in an attempt to facilitate a smooth transition.

The grower representatives on the Review Group also raised the issue of transitional financial assistance for growers forced into such structural change, particularly as regards financiers changing view of this farming industry when the current system is altered.

104. To provide for a measured approach to institutional change in the NSW poultry meat industry, the majority of the Review Group also agreed that at the end of the 3 year period there should be a review of the new arrangements. Subsequently, the arrangements could either be continued, authorisation of processor negotiating groups could be pursued, or voluntary cooperative arrangements could be considered.
105. The 3 year period will provide an opportunity to further assess the adequacy of the *Trade Practices Act 1974* and authorisation arrangements. Importantly, it will also

- provide for a period of time in which growers can more adequately consider their business responses and thereby minimise adjustment costs.
106. It is proposed that the new oversighting body in addition to its over-sighting and facilitating functions in relation to processor negotiating groups, have a reporting function to the NSW Government on the effectiveness of the arrangements for their initial term. The ACCC will also be requested to maintain a monitoring role.
107. The acceptance of Option 3 by the grower representatives on the Review Group is dependent on the development of a suitable and enforceable Code of Practice for Contract Negotiations and Minimum Contract Guidelines, a number of definitional issues and the development of suitable penalties for non-compliance.
108. The Review Group concluded that a committee be formed to prepare the Code of Practice for Contract Negotiations and the Minimum Contract Guidelines. This committee is to consist of the Chair and the two independent members of the PMIC as well as three grower and three processor representatives. The processor and grower representatives do not have to be PMIC members. Steggles/Bartter, Inghams and the independent processors will each be represented and there will be a corresponding grower representative on the committee.
109. The Review Group concluded that the committee have until March 2000 to agree upon the Code of Practice for Contract Negotiations and the Minimum Contract Guidelines. These will need to be submitted to the Chair of the Review Group to ensure they are consistent with Competition Policy principles before they are submitted to the Minister.
110. If the committee is unable to reach agreement on the Code of Practice for Contract Negotiations and/or the Minimum Contract Guidelines then the committee will seek the Minister's guidance.

***Recommendation 2.*** *It is recommended by the Review Group\* that new legislation be introduced by the NSW Government, no later than June 2000, which repeals the existing Act and makes provision for the establishment of processor negotiating groups (PNGs) and an oversighting industry body of similar make-up to the current PMIC.*

***Recommendation 3.*** *It is recommended by the Review Group\* that the new legislation contain the following provisions.*

- (a) *Responsibility for contract agreements and fee setting would be transferred from the PMIC to individual PNGs.*
- (b) *Collective negotiation of fees and other contract conditions would occur at the individual PNG level.*

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\* Acceptance of this recommendation by the grower representatives on the Review Group is subject to the committee (referred to in recommendation 4) reaching agreement on a suitable and enforceable Code of Practice for Contract Negotiations and Minimum Contract Guidelines.

(c) *The conduct of PNGs would be governed by a Code of Practice for Contract Negotiations established as a regulation under the Act. The Code of Practice would contain provisions relating to:*

- *the composition of PNGs including their formation, discontinuation and reinstatement;*
- *appointment of delegates to PNGs;*
- *election of grower delegates;*
- *the functions of PNGs;*
- *procedures relating to the calling of PNG meetings;*
- *procedures relating to agreed resolutions and unresolved matters relating to all growers and to an individual grower;*
- *dispute resolution procedures;*
- *non-participating growers;*
- *arrangements which will apply in the event of non-functional PNGs;*
- *penalty provisions against processors and growers (with quantum being decided by Parliamentary Counsel and NSW Agriculture);*
- *clarification of 'opt-out' provisions; and*
- *further detail of the transition period for renewal of contracts including time frames and use of agents.*

*Particular consideration should be given to including provisions which require contract negotiations to be finalised at an appropriate time prior to the end of the current contract period.*

(d) *Dispute resolution provisions would include those detailed in paragraph 6.50.*

(e) *Growers would have the ability to 'opt-out' of collective negotiations, however, the Code of Practice would contain provisions which relate to opting out.*

(f) *Contracts developed by PNGs would be required to comply with Minimum Contract Guidelines which would also be established as a regulation under the Act. These guidelines will identify cost factors and principles which are required to be considered by growers and processors in negotiating the terms and conditions of contracts. Farm biosecurity standards are a specific issue to be considered within these guidelines.*

**Recommendation 4.** *It is recommended by the Review Group that a committee be formed to prepare the Code of Practice for Contract Negotiations and the Minimum Contract Guidelines. This committee is to consist of the Chair and the two independent members of the PMIC as well as three grower and three processor representatives. The processor and grower representatives do not have to be PMIC members. Steggle/Bartter, Inghams and the independent processors will each be represented and there will be a corresponding grower representative on the committee.*

*The Review Group concluded that the committee have until March 2000 to agree upon the Code of Practice for Contract Negotiations and the Minimum Contract Guidelines. These will need to be submitted to the Chair of the Review Group to ensure they are consistent with Competition Policy principles before they are submitted to the Minister.*

*If the committee is unable to reach agreement on the Code of Practice for Contract Negotiations and/or the Minimum Contract Guidelines then the committee will seek the Minister's guidance.*

**Recommendation 5.** *It is recommended by the Review Group\* that an industry body of similar composition to the PMIC be maintained to oversight the operation of PNGs. The industry body's functions would be to:*

- *assist in the establishment of PNGs;*
- *ensure appropriate implementation of the Code of Practice for Contract Negotiations governing the conduct of PNGs and the Minimum Contract Guidelines for contract agreements developed by PNGs;*
- *act as a mediator or appoint a mediator/arbitrator in PNG disputes relating to the Code of Practice for Contract Negotiations with the authority to refer a breach of the Code of Practice or Minimum Contract Guidelines to the Australian Competition and Consumer Commission, or other government bodies.*
- *act as an industry forum for the dissemination of information;*
- *advise the Minister on matters relating to the poultry meat industry referred to it by the Minister; and*
- *monitor the effectiveness of the new arrangements.*

**Recommendation 6.** *It is recommended by the Review Group\* that representation on the new overseeing industry body be similar to that under the existing legislation (as detailed below) and that the new industry body be fully funded by NSW poultry growers and processors.*

*Representation of the new industry body:*

- *four processor representatives (two associated and two independent [not Inghams or Steggles/Bartter]);*
- *four grower representatives (two associated and two independent [not contracted to Inghams or Steggles/Bartter]);*
- *two independent members who, in the opinion of the Minister, are skilled in negotiation or have expertise in commerce; and*
- *the Chairperson who is an independent member of the Minister's own choosing.*

*The quorum for voting purposes should consist of a majority of grower representatives and a majority of processor representatives. The role of the overseeing body is not to*

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\* Acceptance of this recommendation by the grower representatives on the Review Group is subject to the committee (referred to in recommendation 4) reaching agreement on a suitable and enforceable Code of Practice for Contract Negotiations and Minimum Contract Guidelines.

\* Acceptance of this recommendation by the grower representatives on the Review Group is subject to the committee (referred to in recommendation 4) reaching agreement on a suitable and enforceable Code of Practice for Contract Negotiations and Minimum Contract Guidelines.

*act as an arbitrator, however, the Chairman and the independents would be able to vote on matters pertaining to the responsibilities of the committee.*

**Recommendation 7.** *As the arrangements under Option 3 involve collective negotiations at the individual processor level, the Review Group\* recommends that the new legislation include explicit exemption from the Trade Practices Act 1974 authorising this conduct.*

**Recommendation 8.** *To facilitate a smooth transition to the new arrangements the Review Group\* recommends that:*

- *the NSW Government fund, for a period of three years, independent consultants to assess the growing costs for growers in each of the PNGs; and*
- *the Review Group conduct an information forum on the operation of the new legislative arrangements for the banking sector.*

**Recommendation 9.** *The Review Group\* recommends that the new legislation be subject to review by June 2003.*

**Recommendation 10.** *The Review Group\* recommends that the Australian Competition and Consumer Commission be requested to maintain a monitoring role in regards to the new arrangements.*

## 1. INTRODUCTION

### COMPETITION PRINCIPLES AGREEMENT

- 1.1 The Competition Principles Agreement was endorsed by all members of the Council of Australian Governments (COAG) in April 1995. The Agreement commits the NSW Government, by the year 2000, to review legislation that restricts competition.
- 1.2 The Agreement requires that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition.
- 1.3 In endorsing the Agreement, governments agreed that:
- the objectives of legislation will be clarified;
  - the nature of the restriction will be identified;
  - the likely effects of the restriction on competition and the economy generally will be analysed;
  - the costs and benefits of the restriction will be assessed and balanced;
  - alternative means for achieving the same result would be considered;
  - any new anti-competitive legislation must conform to the net public benefit principle; and
  - retained anti-competitive legislation must be reviewed at least once every ten years to determine if it is still required.
- 1.4 In assessing the costs and benefits of particular legislation, COAG agreed that the following matters, where relevant, be taken into account:
- government legislation and policies relating to ecologically sustainable development;
  - social welfare and equity considerations, including community service obligations;
  - government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
  - economic and regional development, including employment and investment growth;
  - the interests of consumers generally, or of a class of consumers;
  - the competitiveness of Australian business; and
  - the efficient allocation of resources.
- 1.4 As part of its commitments under the Competition Principles Agreement, the NSW Government has undertaken a review of the *Poultry Meat Industry Act 1986*.
- 1.5 Consistent with the Competition Principles Agreement, the purpose of the review is to determine if this piece of legislation results in a net public benefit and whether there are other more pro-competitive means of addressing the Government's objectives in this area.

## CONDUCT OF THE REVIEW

- 1.7 The Review Group was chaired by NSW Agriculture (Mr Geoff File) and further comprised:
- five representatives of the poultry meat industry (Mr George Slennett, Dr Joanne Sillince, Mr John Wilkinson, Mr John Hexton and Mr John Cordina);
  - one representative of NSW Treasury (Mr David Feeney/Mr Peter Shields);
  - one representative of NSW Agriculture (Mr Scott Davenport); and
  - one representative of The Cabinet Office (Mr David Bernauer).
- 1.7 Mr David Feeney was the initial NSW Treasury representative on the Review Group. However, due to Mr Feeney leaving NSW Treasury in August 1998, he was replaced on the Review Group by Mr Peter Shields.
- 1.8 Key functions of the Review Group were the preparation and distribution of an Issues Paper, consultation with stakeholders, consideration of submissions and preparation of the Final Report.
- 1.9 The Review Group called for public submissions and released the Issues Paper in April 1998. The closing date for submissions was originally 1 July, however, this was later extended to 15 July. Over 180 submissions were received, including 32 confidential submissions from meat poultry growers. Confidential submissions were not directly submitted to the Review Group, but rather were sent by growers to the industry association, which then removed the names of the growers before forwarding them on to the Review Group.
- 1.10 The Review Group conducted public forums on the Issues Paper in Seven Hills (Sydney), Maitland and Tamworth. The Review Group held a number of meetings during the review.

### *Public Benefit Assessment Methodology*

- 1.12 The guiding principles of the Competition Principles Agreement place the onus of proof on those advocating restrictions on competition.
- 1.13 These principles have been derived from presumption and theory. The presumption is that competitive markets generally deliver greater net public benefits than restricted markets.
- 1.14 This means that in cases where an alternative option can be identified as being both effective and more pro-competitive, it is to be favoured.
- 1.15 The approach obviates the need for a formal cost-benefit analysis involving monetary quantification of costs and benefits.

- 1.16 Instead, it involves making informed judgements about the existence of costs and benefits and their relative magnitude under each option.
- 1.17 The judgements are based on evidence presented to the Review Group as well as knowledge of how markets operate. This has been the approach adopted in this review.

## **STRUCTURE OF THE REPORT**

- 1.18. Chapters 2 and 3 provide background information on the poultry meat industry and the major provisions of the *Poultry Meat Industry Act 1986*. In Chapter 4, the objectives of the Act are discussed and in Chapter 5, the competition restricting provisions of the Act are examined. Chapter 6 contains a discussion and evaluation of the public benefits and costs associated with the current legislation and with a number of alternative regulatory options considered by the Review Group. Chapter 7 contains the Review Group's overall assessment.
- 1.19. The Terms of Reference of the review are at Appendix 1. In Appendix 2, submissions made to the review are listed and Appendix 3 contains an outline of the legislative framework for poultry meat growing in other jurisdictions. In Appendix 4, a brief overview of Section 51AC of the *Trade Practices Act 1974* is given. A summary of the derivation of the January 1999 rearing fee model is in Appendix 5 and Appendix 6 contains the gazetted growing fees for the period from January 1993 to January 1999.

## **REVIEWS IN OTHER STATES - AN ASSESSMENT BY THE NCC**

- 1.20. The comments contained in the shaded box overleaf are a direct quote from the National Competition Council's report on the National Competition Policy Second Tranche Assessment. The comments focus on developments relating to poultry meat legislation in the relevant Australian jurisdictions.

## NATIONAL COMPETITION COUNCIL SECOND TRANCHE ASSESSMENT - POULTRY MEAT LEGISLATION

### *Developments*

The Governments of South Australia, Western Australia and Queensland have each agreed to remove regulated entry barriers and to retain some degree of collective bargaining subject to allowing individual growers the right to “opt out” - that is, to separately negotiate a supply agreement with a processor. Their approaches to achieving this have differed.

South Australia reviewed its *Poultry Meat Industry Act 1969* in 1994. The review found that the industry no longer required specific legislation to provide security for chicken growers. The Government subsequently introduced a Bill to repeal the legislation that was passed by the Lower House. Passage through the Upper House was adjourned pending authorisation by the ACCC of collective negotiation arrangements between each processor and their respective growers. Authorisation for five years has now been granted, and the repeal Bill is awaiting space in the legislative program.

Queensland completed a review of its *Chicken Meat Industry Committee Act 1976* in 1997 and, in December 1998, the Government agreed to implement the recommendations. Amendments currently before the Queensland Parliament reduce the Industry Committee’s role to a facilitative one - convening representative groups of growers to negotiate with each processor, and referring disputes to mediation or arbitration. The Committee will be specifically barred from making recommendations or providing information on growing fees.

Western Australia reviewed its *Chicken Meat Industry Act 1977* in 1996. As noted above it recommended removal of entry regulations and permitting growers to opt out of collective negotiations. It also recommended retention, subject to review in another five years, of the Industry Committee’s power to set a fee for supply contracts between growers and processors. The Government endorsed these recommendations and intends to amend the Act by the year 2000.

New South Wales and Victoria have reviews of their respective legislation underway. These will be addressed in the third tranche assessment.

### *Assessment*

Subject to the passage of legislation, the decisions by South Australia, Queensland and Western Australia accord with the outcomes of their respective reviews which seem to have been sufficiently open and objective. South Australia’s approach is of particular note as it illustrates how general competition law can, in some circumstances, render specific legislation unnecessary.

While retaining industry specific legislation, the approaches taken by Queensland and Western Australia are likely to have a largely similar impact as South Australia’s. However, Western Australia could usefully look at drafting its amendments to provide for collective negotiations on a processor basis, rather than on an industry-wide basis. The Council is satisfied that, once each Government makes its respective legislative changes, they will have met their CPA clause 5 commitments in this area.

## 2. INDUSTRY BACKGROUND

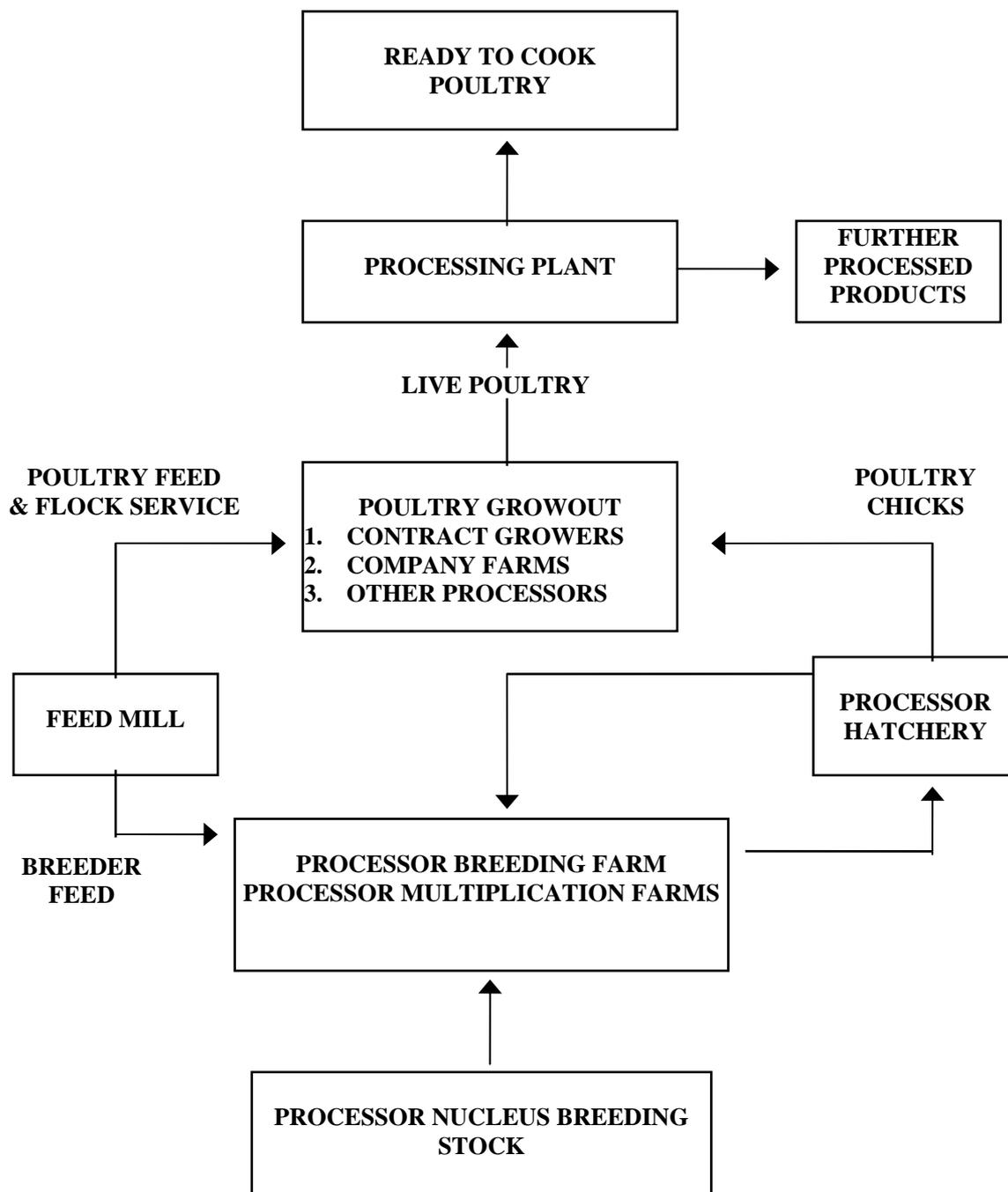
### INTRODUCTION

- 2.1 The Australian poultry meat industry is characterised by having the majority of birds grown through a contract grower/processor relationship. On contract farms, processors provide the birds, feed, veterinary services, medication, animal husbandry advice, and undertake growing on company farms, processing, marketing and distribution. Contract growers provide animal management, capital inputs (land, housing and equipment), meet some variable inputs such as bedding, gas and electricity and are responsible for waste disposal.
- 2.2 Throughout Australia about eighty per cent of chickens are grown by contract growers (in NSW the figure is slightly lower) while the balance is produced by a small number of large company-owned farms. The *Poultry Meat Industry Act 1986* does not apply to company farm production, i.e., processors growing their own chickens, represents an alternative to contract growing. The main reason for processors preferring contract growing is that it frees up working capital for marketing and business growth, rather than locking funds into farm asset infrastructure.
- 2.3 Most integrated processor operations are established within an 80 kilometre radius of large metropolitan areas because of cost savings in relation to distribution, labour and services. Poultry growing operations are situated in close proximity to processing plants because of cost savings associated with feed transport, the transport of chicks to growing operations and the pick up of finished birds. Besides the main areas around Sydney, there is substantial poultry production in the Hunter Valley, the Central Coast, the Riverina, Tamworth and the North Coast.
- 2.4 The various operations involved in the production of poultry meat are illustrated in Figure 1 overleaf.  
  
Production of chicken meat is a year-round activity. The major costs involved in producing a live broiler chicken are the cost of producing the day old chick, the growing fee and feed costs.
- 2.5 Meat chickens are raised from hatchling to processing stage in sheds designed to house approximately 20,000 meat chickens. The usual shedding arrangement allows for an initial area at one end of the shed to house the chick hatchlings in one dense mass, confined by a curtain and heated from overhead. As the chickens grow the curtain is moved gradually further down the shed with less heating required as the growing chickens generate more of their own body heat.
- 2.6 Meat chickens are generally allowed unlimited access to feed until they reach the required slaughter age (around six to eight weeks depending on market requirements). Rations are formulated to strict nutritional standards, with the optimum and most economical combination of feed ingredients at any particular time being selected by 'least cost formulation' computer programs. The dietary formulation therefore varies

with changes in the availability, price and quality of specific feed ingredients, the location and season and the age of the broiler flock.

- 2.7 Poultry sheds are cleaned out between batches, and the litter on the floor of the shed may be replaced or topped up and the shed left empty for about a week before the next batch of day-old chicks is placed in it. Five to six batches are usually run through a shed each year.

**Figure 1: Operations Performed by the NSW Poultry Meat Industry<sup>1</sup>**



<sup>1</sup> Larkin, J.T. and S.G. Heilbron (1997), The Australian Chicken Meat Industry - International Benchmarking Study, Australian Chicken Meat Federation (modified).

## INDUSTRY HISTORY

- 2.8 The Australian poultry meat industry is highly integrated, with processors owning chicken breeding and hatching operations, feed mills and chicken processing plants. Rapid adoption of new technologies and improved management practices over the last four decades has enabled the Australian poultry meat industry to achieve significant gains in production efficiency relative to substitute commodities such as beef, lamb and pork<sup>2</sup>. Chicken is also the least cost meat of all “primary cuts” in the market place.
- 2.9 Compared with other livestock industries, the chicken meat industry’s history is brief, and in its early stages, provided a sideline to egg production. In the 1950s, a specialist poultry meat industry emerged, based on growing to market condition birds that were bred for egg production and that were surplus to the needs of the egg industry. As the poultry meat industry grew, the need for greater efficiency of feed conversion to poultry meat caused a division of the poultry breeding industry into egg and chicken lines<sup>3</sup>. They are now considered two separate industries.
- 2.10 The current industry configuration of growers and processors emerged in the late 1950s, when the first real efforts were made to develop an Australian chicken meat breed. This resulted in the release of Australia’s first scientifically bred chicken meat strain in 1959<sup>3</sup>. At the same time major feed suppliers sought to guarantee markets for their produce by investing in existing hatcheries and smaller processing enterprises with a view to diminishing the risk and uncertainty in marketing<sup>2</sup>. With the introduction of continuous chain processing systems, chicken processing moved into mass production. The resulting economies saw a rapid fall in the price of chicken to consumers.
- 2.11 Further expansion of the commercial industry took place in the 1960s associated with these developments and with the rise of the integrator in the industry. These were vertically integrated companies (fashioned on the USA meat chicken company model), which owned chicken breeding and hatching operations, feed mills and chicken processing plants and which contracted out the growing of chickens from day-old to slaughter weight to contract growers.
- 2.12 The introduction of Kentucky Fried Chicken in Australia, with its first store opening in 1968, had a major impact on the consumption of chicken.
- 2.13 Coupled with further improvements in the genetic material available, refinement of the nutrition and husbandry of broiler chickens, improvements in processing technologies and further growth in demand, the industry’s output increased more than five-fold in the 1960s and more than doubled again in the 1970s.
- 2.14 It has continued to grow steadily, although less spectacularly, throughout the past 15 years.

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<sup>2</sup> NSW Agriculture (1991), Review of the NSW Poultry Meat Industry Act 1986 - Issues Paper, NSW Agriculture.

<sup>3</sup> Australian Competition and Consumer Commission (1998), Draft Determination On Steggle Limited and Others Application for Authorisation in Relation to the Collective Negotiation of Chicken Growers’ Contracts in South Australia.

2.15 Throughout the 1990s, the principal participants in the Australian broiler processing industry have been Inghams Enterprises Pty Ltd (Inghams) and Steggles Limited (Steggles) which is affiliated with the corporate group Goodman Fielder Pty Ltd. It should be noted that since the review has commenced Goodman Fielder Pty Ltd has sold Steggles to Bartter Pty Ltd.

## POULTRY MEAT PRODUCTION

2.16 In 1997-98 production of chicken meat in Australia was estimated at 550,500 tonnes from 368.7 million birds<sup>4</sup>. Retail sales of poultry products are currently estimated to reach \$2 billion annually.

2.17 Rapid adoption of new technologies and improved management practices over the last four decades have enabled the Australian poultry meat industry to achieve significant gains in production efficiency.

2.18 The average real retail price of chicken has declined by 4.7 per cent over the last 15 years, largely due to efficiency gains in the industry<sup>5</sup>. This compares with 2.4 per cent for pork, 1.6 per cent for lamb, and 1.3 per cent for beef<sup>6</sup>.

2.19 Poultry meat is Australia's second most consumed meat. In 1997-98, it is estimated that the per capita consumption of poultry meat was 30.7 kilograms<sup>7</sup>. In the same year, it is estimated that the gross value of poultry meat produced in NSW (\$471.3 million) represented approximately 6.0 per cent of the total value of agriculture commodities produced in NSW (\$7757.8 million) and also represented approximately 43.6 per cent of the total gross value of poultry meat produced in Australia (\$1079.8 million)<sup>8</sup>.

2.20 NSW is the largest producer of chicken meat in Australia, followed by Victoria and Queensland (see Table 1).

**Table 1: Chicken Meat Production by State (Tonnes Carcass Weight[a])<sup>4</sup>**

Year	NSW	Vic	Qld	SA	WA
1993-94	193,137	123,529	72,000	40,671	39,386
1994-95	199,589	109,515	76,337	39,103	42,007
1995-96	199,152	127,736	71,607	37,691	44,358
1996-97	200,277	129,930	80,485	38,932	46,789
1997-98	213,557	151,329	89,460	not available	not available

(a) - chicken meat is shown in dressed weight of whole birds, pieces and giblets.

<sup>4</sup> Australian Bureau Of Statistics (1999), Livestock Products - March Quarter 1999, Catalogue Number 7215.0, Australian Bureau of Statistics.

<sup>5</sup> Larkin, J.T. and S.G. Heilbron (1997), The Australian Chicken Meat Industry - International Benchmarking Study, Australian Chicken Meat Federation.

<sup>6</sup> Australian Competition and Consumer Commission (1999), Draft Determination on Inghams Enterprises Pty Limited Application for Authorisation in Relation to the Collective Negotiation of Chicken Growers' Contracts in Tasmania.

<sup>7</sup> Australian Bureau of Statistics (1998), Apparent Consumption of Selected Foodstuffs, Australia, Preliminary 1997/1998, Catalogue Number 4315.0.

<sup>8</sup> Australian Bureau of Statistics (1998), Value of Principal Agricultural Commodities Produced, Australia, Preliminary 1997/1998, Catalogue Number 7501.0.

- 2.21 NSW has the largest number of poultry meat farms in Australia, with approximately 319 chicken and 52 turkey farms in 1997. NSW is unique in that unlike other States where there are only two to three processors, in NSW there are at least nine. Inghams and Steggle (see paragraph 2.15) are the major poultry meat processors in NSW, followed by firms such as Bartter, Baiada, Red Lea, Cordina, Penrith Poultry, Sunnybrand and Jancart. Processors use contract growers and company farms to varying extents to meet their processing requirements.

## CONTRACT SYSTEM OF CHICKEN GROWING

- 2.22 In NSW the contract system of chicken growing has been an intrinsic part of the chicken meat industry for twenty five years. The Australian Competition and Consumer Commission (ACCC) has identified characteristics of this system as:

**Processor control of inputs and rearing specifications** - Processors control the genetic material for breeding chicken. They supply contract growers with day old chicks to be reared according to detailed specifications. Processors also provide other important inputs to the growing process, including all feed and medications.

**Rearing of chickens under contract** - universally, and only because of legislation, processors and contract growers enter into contracts, either on a batch basis, or on contractual terms of between one and five years. Under these contracts, contract growers are independent contractors, not employees of the processor. The contract growers never own the chicks they rear.

**Rearing fee is a small component of product costs** - the cost of contract rearing contributes only 10.7 per cent of the wholesale costs and 8.5 per cent of the retail price.

**Significant equity contributions by growers** - growers contribute approximately 40 per cent of the capital investment in the industry through ownership of farms, shedding and other facilities used in the growing of chickens.

**Capital investment** - the contract growing of chickens is capital intensive. The average contract farm in Australia consists of 3 to 4 chicken growing sheds, each with a floor area of 1200 square metres. The replacement cost of such sheds, with all internal equipment, is approximately \$230 per square metre.

According to the NSW Farmers' Association, Poultry Meat Group<sup>9</sup>, the national value of the contract chicken growing market and company farms was estimated as follows:

### Contract Farms

Number of chickens produced annually	320 million
Number of chickens produced on contract farms	262 million
Average rearing fee	\$0.4472 per chicken
Gross revenue to contract farms	\$124 million p/a
Estimated capital investment in contract farms	\$800 million

### Company Farms

<sup>9</sup> NSW Farmers' Association Poultry Meat Group (1998), Submission to the Poultry Meat Industry Act Review, NSW Farmers' Association.

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Estimated capital investment

\$200 million

- 2.23 Chicken growing sheds are highly specialised and have virtually no alternative use. In addition, they are non-portable. Because of the geographic location of processors and the requirement that their contract growers are in close proximity, many growers are limited to growing chickens for only one processor. This is especially so on the North Coast, Tamworth and the Hunter Valley.

## AUSTRALIAN POULTRY MEAT EXPORTS AND IMPORTS

- 2.24 Australia exports only a small percentage of poultry meat production (estimated to be 1.9 per cent of dressed chicken production or approximately 9,800 tonnes<sup>10</sup>). Larkin and Heilbron (1997<sup>11</sup>) state “poultry industries worldwide are multi-domestic rather than multinational. Countries can easily achieve high degrees of domestic self sufficiency through the ready availability of internationally traded production equipment, technology and feed while protecting their domestic markets through high tariff protection and complex veterinary and health restrictions”.
- 2.25 It is important to note that while exports are small they are increasing exponentially.
- 2.26 Historically, Australia has not imported chicken meat because of the Commonwealth Government’s previous ‘no risk’ disease prevention policy. However, in 1990, the Australian Quarantine and Inspection Service (AQIS) undertook a risk assessment to evaluate the implications of allowing imported chicken meat into Australia. The assessment concluded that chicken meat should be allowed to be imported into Australia on the proviso that the product met a set of import protocols. These protocols required imported chicken meat to be cooked to meet minimum temperature and time requirements to reduce the risk of virulent exotic poultry diseases entering Australia.
- 2.27 Industry concerns about the scientific basis of the AQIS decision led to further testing. As a result, AQIS introduced more stringent cooking requirements.

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<sup>10</sup> National Farmers’ Federation (1997), ‘Australian Agriculture’, Sixth Edition 1997/98, Morescope Publishing.

<sup>11</sup> Larkin, J.T. and S.G. Heilbron (1997), The Australian Chicken Meat Industry - International Benchmarking Study, Australian Chicken Meat Federation.

### 3. THE NSW POULTRY MEAT INDUSTRY ACT 1986

#### MAJOR PROVISIONS OF THE POULTRY MEAT INDUSTRY ACT 1986

3.1 In NSW, the *Poultry Meat Industry Act 1986* (the Act) provides for the establishment of the Poultry Meat Industry Committee (PMIC or the Committee) which sets guidelines and approves agreements between processors and growers of poultry meat, determines fees to be paid to growers for raising poultry and negotiates disputes between processors and growers.

3.2 The PMIC is a statutory body representing the Crown and is subject to the control and direction of the Minister for Agriculture (the Minister). The functions of the Committee are defined in Section 6 of the Act. They include:

- to set guidelines for the drawing up of agreements between processors and growers;
- to approve forms of agreement if, in the opinion of the Committee, they are in accordance with those guidelines;
- to determine, prices (that is, fees paid to growers for the raising of poultry) to be paid for designated poultry;
- to settle by negotiation disputes between processors and growers;
- to make reports or recommendations to the Minister on any matter relating to the poultry meat industry; and
- to exercise such other functions as are prescribed.

3.1 The membership of the Committee consists of fifteen persons appointed by the Minister, of whom:

- six are processor representatives (three associated<sup>12</sup> and three independent [not Inghams or Steggle]);
- six are grower representatives (three associated<sup>12</sup> and three independent [not contracted to Inghams or Steggle]);
- two independent<sup>13</sup> members who, in the opinion of the Minister, are skilled in negotiation or have expertise in commerce; and
- the Chairperson who is an independent<sup>13</sup> member of the Minister's own choosing.

3.1 Under the Act, a processor shall not process designated poultry grown in a batch of 1,000 or more unless the designated poultry were grown under a written agreement approved by the Committee, or were grown at a farm operated by a processor.

3.2 The Act defines 'designated poultry' as a chicken of the species *Gallus gallus* which is not more than 18 weeks old; or another bird of such species or description as the Governor may, by order published in the Gazette, declare to be designated poultry,

<sup>12</sup> 'Associated processor' means a processor who is a member of the Australian Poultry Industries Association. 'Associated grower' means a grower who grows designated poultry under an agreement with an associated processor.

<sup>13</sup> 'Independent' means not an officer of NSW Agriculture and not a representative of processors or growers.

being a chicken or another bird which is being or has been grown specifically for consumption as poultry meat after processing.

- 3.3 The PMIC has established *Guidelines for Agreements* between growers and processors. The Committee approves agreements which conform to the Guidelines and are supported by a majority of the growers contracted to the particular processor.
- 3.4 In determining the fees paid to growers for the raising of designated poultry, the Act states that the Committee must take into account:
- growing costs;
  - the species of poultry involved;
  - the duration of any relevant rearing period;
  - the annual throughput of poultry;
  - poultry housing density;
  - the needs of the industry;
  - market forces affecting the industry;
  - the public interest; and
  - such other matters as the Committee thinks relevant.
- 3.1 When there is a dispute between a processor and a grower with regard to any agreement, the matter in dispute may be placed before the Committee for settlement by negotiation. The role of the Committee in such disputes is largely one of conciliation rather than arbitration, as there is no statutory power to enforce decisions on either party. It does not limit either party's rights at law.
- 3.2 The majority of the costs involved with administering the Act, i.e., costs associated with the PMIC carrying out its functions, are funded by industry in the form of the prescribed fees which the PMIC collects when approving contracts. This money goes directly into consolidated revenue and in return NSW Agriculture receives a budgetary allocation from Treasury. On top of these funds, NSW Agriculture lends additional support by way of providing the services of one of its employees to perform the functions of the PMIC Secretary.
- 3.3 Details of the legislative arrangements regulating poultry meat production in other Australian jurisdictions are contained in Appendix 3.

## **DEVELOPMENT OF NSW POULTRY MEAT LEGISLATION**

- 3.11 As stated in the previous chapter, the current industry configuration of processors and growers began to emerge in the late 1950s with the introduction of continuous chain processing systems.
- 3.12 During the mid 1960s, chicken meat consumption increased as productivity gains enabled broiler chickens to be priced more competitively with red meat. At the end of the decade this expansion caused prices to fall and a rationalisation of firms following a series of takeovers.

- 3.13 It is reported that relations between some processors and growers deteriorated over the 1960s as processors reduced rearing fees as part of their overall cost-cutting strategy<sup>14</sup>.
- 3.14 Under an existing 'buy-back' arrangement, processors sold feed and day old chicks to growers and, six to eight weeks later, purchased the live birds at an agreed price per pound. Processors typically negotiated prices with individual growers on a batch by batch basis.
- 3.15 Growers expressed dissatisfaction with the system because processors had the potential to influence grower margins by varying input costs. Moreover, it was argued that processors frequently failed to deliver increments in the buy-back price whereas feed and chicken cost increases were transferred almost immediately<sup>15</sup>.
- 3.16 Moves to establish standard rearing fees strengthened throughout Australia in the late 1960s and early 1970s. State based organisations were established in New South Wales, Victoria, Queensland, South Australia and Western Australia to represent the interests of growers. In 1967, the Australian Council of Broiler Growers' Associations was formed. It is now known as the Australian Chicken Growers Council (ACGC)<sup>16</sup>.
- 3.17 Although industry stability was restored temporarily following the development of fast food chains specialising in chickens, the expansionary phase led to surplus production in 1973. Again, prices declined significantly and culminated in a number of disputes concerning the negotiation of rearing fees.
- 3.18 In July 1973, the ACGC presented a submission to the Federal Government and all State Governments seeking introduction of legislation in each State to govern contract agreements between chicken growers and processors.
- 3.19 The Council argued that the existence of a large number of growers and a small number of processors had placed processors in a strong bargaining position. The intention of the proposed legislation was to provide the industry with a mechanism for discussion and negotiation on the rearing fee in an orderly, stable manner. It was recognised at the time that, without the existence of legislation, the provisions of the *Trade Practices Act 1974* could prohibit the negotiation of the rearing fee between growers and processors<sup>17</sup>.
- 3.20 Following consideration of the submissions by the Australian Agricultural Council (AAC) in 1974, AAC proposed that model legislation should be drafted for all States. Multilateral action was required because the major processing conglomerates had interstate facilities. More specifically, concerted action to remedy existing problems in one State had the potential to result in a transfer of processing activities to another State<sup>18</sup>.

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<sup>14</sup> Public Bodies Review Committee (1987), Victorian Broiler Industry Negotiation Committee, Nineteenth Report to the Parliament of Victoria, Government Printer, Melbourne.

<sup>15</sup> NSW Agriculture (1991), Review of the Poultry Meat Industry Act 1986 - Issues Paper, NSW Agriculture.

<sup>16</sup> Australian Competition and Consumer Commission (1998), Draft Determination On Steggle's Limited and Others Application for Authorisation in Relation to the Collective Negotiation of Chicken Growers' Contracts, Australian Competition and Consumer Commission.

<sup>17</sup> Queensland Government (1990), Poultry Meat Industry Review Discussion Paper, Department of Primary Industries.

<sup>18</sup> Public Bodies Review Committee (1987), Victorian Broiler Industry Negotiation Committee, Nineteenth Report to the Parliament of Victoria, Government Printer, Melbourne.

- 3.21 At a joint meeting in November 1975 between grower and processor representatives, the New South Wales Minister for Agriculture was requested to introduce legislation similar to that already established in Victoria (*Victorian Broiler Chicken Industry Act 1975*). The stated purpose of the legislation was to establish an industry committee (the Chicken Meat Industry Committee) to ensure that the interests of growers and processors were protected in contract conditions and to resolve disputes on any contract matters.
- 3.22 New South Wales growers contended that their well being depended upon continuous production levels consistent with demand at prices sufficient to ensure the economic viability of industry members. It was considered that without legislative protection, regular supplies of broilers may not be available, particularly in light of intense competition from the sale of red meat.
- 3.23 The Minister agreed to such legislation and the *Chicken Meat Industry Act 1977* was proclaimed on 1 June 1978.
- 3.24 During the eight years in which the 1977 Act was in force, industry experience highlighted that certain areas of the Act needed improvement. In view of the number of proposed amendments, it was considered at the time desirable for an entirely new Act to be drafted.
- 3.25 The amended legislation, referred to as the *Poultry Meat Industry Act 1986*, strengthened the Committee's powers to set standard growing fees and made provision for the inclusion of poultry meats other than chicken. The 1986 Act provided for the establishment of a statutory body known as the Poultry Meat Industry Committee to replace the prior committee.
- 3.26 In 1991, NSW Agriculture conducted a review of the 1986 Act at the request of the then Minister for Agriculture and Rural Affairs. The Draft Report of the review was publicly released in January 1992 seeking submissions from interested parties. The Final Recommendations of the Review Group were submitted to the Minister in April 1992.
- 3.27 The recommendation in the Draft Report was that the Act be repealed. The Minister, however, decided to retain the legislation, noting that "the review did not quantify either the costs imposed by the legislation or the costs that were likely to be faced if deregulation were to occur; and concerns that the lack of countervailing power of producers in a deregulated environment may not be in the best interests of the industry or consumers".
- 3.28 The Minister proposed to change the current legislation to allow for a fifteen person Committee of similar composition to the then current Committee, but having two independent members with specialist skills rather than the one consumer representative. The Minister also decided that the growing fee process should be made more flexible to allow the particular circumstances of growers and their processor to be taken into consideration.
- 3.29 As a result of the legislation review, the PMIC addressed the issue of increased flexibility in price setting. In the second half of 1992, the PMIC agreed to a new model; procedures were agreed for the updating of the model each six months for the ensuing

three years; and a set of guidelines were established for negotiating flexible rearing fees on a group basis, to be based on the model but subject to variation based on operating circumstances experienced by individual processors. The effective result is that no two processors pay their contract growers the same growing fee.

- 3.30 Implementation of the Minister's decision in 1992 to make amendments to the Act did not occur until 1994-95, when the composition of the PMIC was changed from fourteen to fifteen members; the Chairperson is now an independent and the number of other independent members of the Committee has expanded from one to two. These independents must possess specialist skills and do not specifically represent consumers.

## 4. CLARIFICATION OF THE OBJECTIVES AND RATIONALE FOR THE POULTRY MEAT INDUSTRY ACT 1986

### OBJECTIVES OF THE POULTRY MEAT INDUSTRY ACT 1986

4.1 To comply with the Competition Principles Agreement, the NSW Government is required to clarify the objectives of the *Poultry Meat Industry Act 1986* and to assess their continuing appropriateness.

4.2 The Review Group clarified the objectives of the Act by reference to the preamble to the *Poultry Meat Industry Act 1986* which states that it is:

*“An Act to constitute the Poultry Meat Industry Committee and to define its functions; to regulate and control the poultry growing industry; to repeal the Chicken Meat Industry Act 1977; and for other purposes.”*

4.3 This general statement is of the form traditionally used in legislation and does not reveal the intended outcome nor what benefits the Government of the day envisaged the people of NSW would derive from establishment of the Committee and statutory intervention in the poultry growing industry. It is only by reference to the second reading speech that the implied outcome of providing countervailing power to poultry growers against processors, can be assumed.

4.4 The Hansard record of the second reading speech of the bill in part states:

*“There is an imbalance in bargaining power in the industry between growers and processors...The 1977 Act was introduced to regulate the contractual obligations between growers and processors by means of the Chicken Meat Industry Committee”.*

4.5 In the Issues Paper prepared by the Review Group comments on the objectives of the Act and their continuing appropriateness were sought from stakeholders. The following comments were chosen on the basis of being representative of key points made throughout the submissions.

### SUBMISSIONS

4.6 The Hattam Family Trust (grower) expressed the following view:

*“As stated in the Issues Paper the Hansard record of the second reading of the Poultry Industry Bill 1986 states ‘There is an imbalance in bargaining power in the industry between growers and processors’. The 1977 act was introduced to regulate the contractual obligations between growers and processors by means of the chicken meat industry committee. The same imbalance of power remains today. The processor is the fat controller. Our survival depends entirely on their companies decisions regarding grow out facilities. At any time they can lay growers off and build their own facilities. This they chose not to do because it is much more economical to have contract growers.”*

4.7 Mr J. Edwards (grower) stated in his submission:

*“Having regard for the original purpose that a PMIC was initiated, that is to give grower groups countervailing powers in their negotiations with processors. These reasons have not changed and are possibly more relevant than ever as processors expand and compete for a limited market and constantly look for a lower grow fee as a way to lowering their cost despite the fact that the grow fee per bird accounts for only 8% of the cost of the finished product...”*

*Unequal bargaining power between processors and growers has seen that power used as leverage to gain all manner of concessions and shed upgrade that are not paid for in the present farm model.”*

4.8 Mr G. and Mrs L. Lee (grower) made the following point:

*“It is our opinion that ‘Market failure’ exists in the poultry meat industry in the form of ‘Imperfect competition’...we as Sunnybrand growers are relatively isolated and therefore out of the reach of other processors and unable to establish a processing plant of our own. There is therefore unequal bargaining power between the processor and the growers. We either grow for Sunnybrand or don’t grow poultry at all”.*

4.9 Mr D. Rayward (grower) stated that:

*“In the broiler industry we have a localised monopoly where the processors have all the bargaining power and the growers have none, unless they can negotiate as a larger group, not as individuals.*

*The growers are in most instances tied to their processor because of geographic reasons. They need to be close to the Processor to reduce servicing costs. ie. cartage of feed, pick up costs, service visits etc.*

*The growers have invested many hundreds of thousands of dollars in shedding and equipment at the request of the processor to become contract growers. [The growers collectively probably have a 50% investment in the total poultry industry]. However, there is no equal bargaining power between the growers and processors. Without a Poultry Meat Industry Act, we would be forced to take whatever price per bird that the processor offered. We do not have the capacity to offer our services to another processor because we are limited by geography to processors. [Our land and sheds are not on wheels].*

*I have asked to see if any Steggles growers could transfer to Inghams. We are told Inghams are only interested in growers on the Central Coast, others are too distant from their plant.*

*Due to the localised monopoly position and the power the processors have over the growers, we as Steggles growers have unfortunately seen two of our colleagues commit suicide over the last few years [one only last week]. The growers are continually being asked to comply with ever increasing demands.”*

- 4.10 Those market failures that currently exist in the poultry meat industry and those which the Act addresses were stated by NSW Farmers' Association Poultry Meat Group to include:

*“Imperfect competition - characterised by unequal bargaining power between growers and processors. Processors control downstream activities (processing of ‘finished’ birds) and growing process inputs (chicks, feed, medication etc.). Processors have absolute power over growers incomes by controlling the number of birds placed on a farm each year, price received, and structure and operation of a pool system.*

*The Act attempts to address these issues by providing a low cost and technically efficient method of negotiating disputes, by providing information to growers about the actual growing costs (through the ‘model’) and assisting growers to negotiate prices with their processor.*

*Externalities exist in the industry. Processors determine the management of pollution (particularly noise) and ‘disaster’ issues such as exotic disease outbreaks (Nov 1997). Growers may be caught in these issues through processor edicts in pollution issues (eg time of pick up) and disputes may arise as a result. The Act seeks to address these issues through examining the actual costs of production (through the ‘model’) and through providing a medium for negotiation on issues where appropriate.*

*Imperfect information is significant for this industry. The processor knows intimately the extent of each grower’s performance and profit/cost relationships. By contrast the growers have limited knowledge of other growers performance and no knowledge of the performance of the processing company (as they are with one exception privately owned companies and hence do not provide any relevant information even to government that would be appropriate for negotiations).*

*There is significant misinformation given to growers regarding the state of a processors’ market difficulties, by presenting information selectively. This may have the effect of growers making decisions that are not in their own best interests, by misleading growers into thinking that if they do not take a certain decision that their survival (or that of their processor) may be in jeopardy. The Act addresses these issues by providing industry information through both the maintenance of the cost based ‘model’ and through gazettal of actual fees paid by processors to their growers.*

*The Act therefore has an important role in information, mediation and negotiation for payments. While it in no case completely addresses the market failures in the industry, it is an important adjunct to efficient industry function”.*

- 4.11 Mr T. Luckhurst (other) stated that:

*“The primary objective of the Act is clearly to provide growers with countervailing power in their dealings with the processors. This is evident from the parliamentary speeches made at both the introduction of the Act in 1977 and its amendments in 1986 and was again endorsed by the former Minister, the Hon. Ian Armstrong, at the time of the most recent review of the Act in 1992.*

*The market failure stems largely from the major inequality in bargaining power that exists between growers and processors”.*

4.12 In relation to the adequacy of the *Trade Practices Act 1974* in providing growers with countervailing power Mr Luckhurst expressed the following views:

*“In general terms, the Trade Practices Act is not a source of protection for growers in their dealings with the processors but quite the reverse. In the absence of specific state legislation providing ‘Shield of the Crown’ the Trade Practices Act would have the effect of adding significantly to the already powerful position of the processors.*

*Authorisation procedures are seen as poor alternatives to effective state legislation. Other provisions of the Trade Practices Act such as those relating to ‘Harsh and Unconscionable Conduct’ may have some relevance in regard to extreme cases of market abuse but would be retrospective in their action and present problems in regard to onus of proof, cost etc”.*

4.13 Sunnybrand Chickens Pty Ltd (processor) expressed the following views in their submission:

*“We feel sure that the objectives of the Act as laid out have been met, in as much as the Act does succeed in providing support and protection to the grower by allowing the grower to enjoy a minimum rate of return on his theoretical investment... We can not see any form of market failure currently in place, but clearly the Act attempts to protect growers with no alternative avenues of supplying their product to processors, from a misuse of this situation by a processor.*

*This could be seen as the case in Sunnybrand’s situation as due to our geographical position our contract growers have no other practical option to supply other processors other than Sunnybrand. This is not unique as there are other areas of NSW where growers will have no options available to them, and their fear is that these processors will then misuse this situation to their advantage by creating pressure on pricing.*

*However, we would see this in reverse, an opinion shared by other processors. This geographical isolation in fact actually puts the grower in a position of strength in our case. Currently 65% of Sunnybrand’s production is taken up by contract growers, so clearly we would require these growers as much as they need us, in order to maintain our market share.*

*The only option open to processors either by choice, or should growers not agree to conditions set out by the processor, would be for the processor to make very large capital investments to replace this growing capacity which would be required in the short term.”*

4.14 Steggle’s Limited (processor) made the following comments:

*“The objectives of the Act have been defined adequately for the time (1977) when the perceived need for legislation arose. However the initial objectives are no longer*

*appropriate because the growers and the processors need to share a common vision to achieve ongoing financial success.*

*Current evidence of market failures are spillovers in the distribution of growing fees, where the long term income a grower receives under the current system is plus or minus 3 cents per bird, whereas the real long term impact on real cost over a statistically significant number of batches is plus or minus 8 cents per bird, ie inappropriate signals are being given to both good and poor performers. Essentially the Act addresses a perceived need from a generation ago. It performs no useful function in relation to market failure now.*

*Steggles is not aware of any evidence that would indicate that processors would abuse any market power in the absence of the Act.*

*There have been two substantial players to enter the New South Wales market since 1990. Bartter have gone from a small presence to in excess of 600,000 birds per week in seven years, while Penrith Poultry were small scale producers at about 20,000 birds per week in 1992 and currently process in the vicinity of 80,000 birds per week. The spectacular growth of Bartter demonstrates that there are minimal barriers to entry into the processing industry.*

*In Steggles view, Steggles does not have any market power in any market in which it operates. In any event, under the ACCC Authorised Model, the growers interest will be adequately protected”.*

- 4.15 In a joint submission, Inghams Enterprises Pty Ltd, Baiada Poultry Pty Ltd, Cordina Chicken Farms Pty Ltd and Red Lea Chickens Pty Ltd (processor) expressed the following views in relation to the objectives of the Act:

*“It is our opinion that the Act in its existing state is no longer applicable. We believe that the Act should be retained but with revised requirements of the PMIC and Negotiating Groups as set out in this submission.*

*Although we are not proposing the abolition of the Act, there is no evidence to suggest processors would misuse market power. There is currently a shortage of shedding (particularly in Sydney) and this situation is exacerbated by urban development. Accordingly, it is in the processors interests to maintain their contracted growers at a viable level and where possible encourage expansion of capacity”.*

In relation to the adequacy of the *Trade Practices Act 1974* in providing countervailing power to growers this group of processors expressed the view that it would provide adequate protection in conjunction with other common law rights.

## DISCUSSION

- 4.16 The Review Group was required to assess the appropriateness of the objectives of the *Poultry Meat Industry Act 1986*. In the context of the Competition Principles Agreement, ‘appropriateness’ is normally based on an assessment of how closely the objectives of the legislation target the achievement of public benefits by addressing

instances of ‘market failure’ (as defined on page (ii)) or other specific social objectives. That is, for example, whether intervention by the NSW Government to establish the PMIC, effectively addresses problems of market power abuse in the poultry industry by processors.

- 4.17 The appropriateness of providing growers with countervailing power through the *Poultry Meat Industry Act 1986* is therefore critically linked to there being demonstrated inadequacies in the ability of the *Trade Practices Act 1974* to address instances of market power abuse in the NSW poultry industry. For this reason a representative of the ACCC was invited to address the Review Group, which they did on two occasions. The ACCC is responsible for administering the *Trade Practices Act 1974*.
- 4.18 In 1997, 1998 and 1999, the ACCC granted authorisation to specific poultry processors and their respective contract growers in South Australia and Tasmania. Authorisation is a procedure under the *Trade Practices Act 1974* which provides protection from action by the ACCC or any other party for potential breaches of the *Trade Practices Act 1974*. One of the objectives of the Act is to prevent anti-competitive conduct. The *Trade Practices Act 1974*, however, recognises that some objectives of society may not always be met by the operation of competitive markets, and thus provides exemptions under limited circumstances.
- 4.19 The authorisations referred to in the above paragraph give effect to standard growing agreements to be collectively negotiated by specific processors and their respective contract growers (processor negotiating groups). In both South Australia and Tasmania there is no active State legislation which regulates the contractual obligations between processors and contract chicken growers.
- 4.20 The information contained overleaf in the shaded box relates to advice to the Review Group from a representative of the ACCC.
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## **ADVICE TO THE REVIEW GROUP FROM THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**

### ***Authorisation***

In relation to authorisations the ACCC provided examples of the types of public benefits which may justify such an arrangement. These included:

- where there was an asymmetry of information between growers and processors;
- where the arrangement involved less time and effort negotiating fees, such that there was a significant reduction in costs;
- where there was less time and effort devoted to resolving industry problems;
- where contract stability resulted in more stable investment; or
- where an arrangement facilitated a smooth transition to deregulation.

The ACCC advised the Review Group that there appear to be no apparent reasons why authorisations could not be sought and approved by participants in the NSW poultry meat industry similar to those in South Australia.

### ***Recourse Through the Trade Practices Act 1974***

The ACCC advised that in the case of market power abuse, growers could go directly to the ACCC to seek recourse at no cost to growers, and in order to avoid subsequent recriminatory behaviour by processors the ACCC would subsequently monitor processor behaviour and would pursue instances where growers were in any way penalised as a result of seeking recourse through the ACCC. The ACCC can only act when a breach of the *Trade Practices Act 1974* can be established.

The ACCC advised that if there were significant concerns about recriminatory behaviour by processors, an industry body could make representations to the ACCC on behalf of growers. The possibility that this may occur may further act as a deterrent to processors engaging in anti-competitive behaviour.

A further issue discussed with the ACCC was whether it could intervene to avoid a situation where processors used coercive behaviour to force growers to opt out of processor negotiating groups so that they might subsequently force them to accept lower prices. The ACCC advised that growers should be free to opt out of negotiating groups if they were able to establish an arrangement that was acceptable to them. However, where opt out by growers was caused by processor coercion, then the ACCC may pursue the matter.

The ACCC went to some length to outline the difference between the provisions of Section 46 of the *Trade Practices Act 1974* which relate to the misuse of market power and the provisions of the recently commenced Section 51AC which relate to unconscionable conduct. Section 46 relies on there being a demonstrated misuse of market power, i.e., showing that a corporation had a substantial degree of market power and had the intention to use this to the disadvantage of a competitor. Section 51AC prohibits a corporation (other than a listed company) from engaging in unconscionable conduct. The legislation lists (without limiting) a number of factors which the Court may have regard to when determining whether this Section has been contravened. The ACCC commented that Section 51AC is 'easier to work with' than Section 46, and may provide better protection against big businesses bullying small businesses, such as contract meat poultry growers, in commercial dealings with people. Appendix 4 provides a brief overview of Section 51AC.

The ACCC expressed the view that there is nothing peculiar about competition issues in the NSW poultry industry such that they could not be addressed by the ACCC. However, they expressed the view that it may be useful to have an industry scheme, eg. a disputes handling procedure, which attempted to resolve issues before they were referred to the ACCC.

## CONCLUSIONS

- 4.21 The Review Group agreed that the preamble to the Act relates to matters of process and fails to clearly indicate the intended outcomes which the NSW Government aims to achieve through this legislation. The Review Group agreed that if the intended outcome is to provide countervailing power or protection to growers against market power abuse by processors, then this should be explicitly stated as the objective of the current or any new future Act.
- 4.22 In considering how appropriate the objectives of the Act are, the Review Group agreed that the primary market failure which may justify intervention of this nature by the NSW Government was market power abuse by processors of growers. The Review Group agreed that the avoidance of market power abuse rather than attempting to increase the market power of growers to match that of processors, was the appropriate focus of government intervention.
- 4.23 The Review Group agreed that market power abuse by processors may have significant efficiency effects such as growers being either forced to leave the industry or to accept below normal returns, resulting in under-investment in the industry.
- 4.24 The Review Group accepted that the *Trade Practices Act 1974* is in place to address market power abuse. Some members of the Review Group expressed uncertainty and concern, however, in relation to the effectiveness of the *Trade Practices Act 1974* in addressing the concerns of NSW poultry growers. The Review Group was also concerned about the reasonableness of any sudden movement away from the current situation where the *Poultry Meat Industry Act 1986* is in place, to one where growers were solely reliant on the *Trade Practices Act 1974*, and more particularly on the recent untested amendments to that Act relating to unconscionable conduct.
- 4.25 The Review Group also agreed that the Act may assist in overcoming other forms of market failures such as problems associated with growers having poor information about market prospects and opportunities.
- 4.26 The Review Group concluded, therefore, that should the NSW Government continue with legislation specific to the NSW poultry industry, then the objectives of that legislation should relate to addressing market power abuse by processors which is not able to be effectively addressed by the *Trade Practices Act 1974*. By avoiding market power abuse by processors of poultry growers, efficient levels of investment should be achieved in areas such as the adoption of new technology and disease control.

## 5. RESTRICTIONS ON COMPETITION

### INTRODUCTION

- 5.1 Under its Terms of Reference, the Review Group was required to identify and analyse the nature and extent of any restrictions on competition arising from the provisions of the *Poultry Meat Industry Act 1986*, and to balance the costs and benefits of any identified restriction.
- 5.2 In addition to assessing whether the restrictive provisions within the Act generate net public benefits, the Review Group was also required to assess whether they do so in a manner which least restricts competition.
- 5.3 The phrase ‘restricting competition’ can mean obvious and major restrictions, such as restricting entry to an industry, setting prices or banning certain commercial behaviour. However, it may also include any restrictions where the effects are more subtle. The definition applied by the Review Group was that a restriction on competition occurs when the behaviour of individuals or firms is changed from that which would otherwise occur.
- 5.4 In applying this rule, the Review Group were of the view that the major provisions of the Act, namely:
- approval of agreements between growers and processors; and
  - determination of the standard growing fee,
- may each restrict (or influence) competition in some way.
- 5.5 In this Chapter, the Review Group identifies and analyses the nature and extent of the restrictions on competition which arise from the provisions of the *Poultry Meat Industry Act 1986*. A representative selection of views from submissions to the review about the benefits and costs of these restrictions is also included, followed by a brief discussion of these claimed benefits and costs.
- 5.6 In the following Chapter the public benefits and costs of the Act are assessed more fully in conjunction with the public benefits and costs of a number of other regulatory options considered by the Review Group.

### APPROVAL OF AGREEMENTS BETWEEN GROWERS AND PROCESSORS

- 5.7 Under the Act, a processor shall not process designated poultry grown in a batch of 1,000 or more unless the designated poultry were grown under an approved written agreement, or were grown at a farm operated by a processor.
- 5.8 A processor must apply to the Committee to seek approval of any form of written agreement. The Committee may approve of a form of agreement to be used generally or

in a particular case or class of cases. An application to the Committee by a processor for the Committee's approval of an agreement must be accompanied by a \$122 fee.

- 5.9 When a processor enters into an agreement with a grower, or where an agreement terminates, the processor must notify the Committee of that fact within one month. This notice must be accompanied by a \$10 fee.
- 5.10 The length of contract between growers and processors is set at five years as a result of administrative procedures developed by the PMIC. Within this time a number of agreements will be negotiated between the two parties.
- 5.11 The PMIC has established *Guidelines for Agreements* between growers and processors. The Committee approves agreements which conform to the Guidelines and are supported by a majority of growers contracted to the particular processor.
- 5.12 The Guidelines indicate the matters to be contained in agreements. These include the following.

- ***Obligations of processors and growers.*** These relate to the normal commercial and operational arrangements between contracting parties.
- ***Payments to growers.*** The Guidelines require that on average the processor pays the standard fee per bird (or adjusted fee) as determined by the PMIC, to his/her growers within four weeks of the birds being picked up from the farm.

A processor may use a pooling system of payment to growers where the performance of all growers in the pool may result in a higher than standard fee being received by growers with a higher than 'pool average' performance and a lower fee by those with lower than 'pool average' performance.

- ***Efficiency rating of growers.*** A processor may use an efficiency rating system for pools which identify 'inefficient' growers. Provision may be made for growers who are persistently rated as 'inefficient' to have their contracts terminated.
- ***Penalties for negligence by grower or processor.*** Procedures are outlined for the apportionment of costs incurred as a result of negligence on the part of the processor or the grower.

#### **DETERMINATION OF STANDARD GROWING FEE**

- 5.13 The Committee is charged with determining the fees paid to growers for the raising of designated poultry. As poultry meat growers are supplied with day old chicks and feed by the processor to whom they are contracted, the growing fee represents a payment to growers for labour, management, the operating costs associated with meat poultry production, and a return on capital investment in shedding and equipment.
- 5.14 The Committee applies a 'model farm' concept to determine an indicative growing fee which is equivalent to the average total cost of production. Parameters of the model include shedding, equipment, labour cash costs, investment, return on capital,

depreciation and throughput. These parameters are reviewed every three years subject to acceptance by growers and processors (there does not have to be unanimity for changes to be made). The terms of the model were last negotiated in July 1994. Their renegotiation has been delayed pending the outcome of this review.

- 5.15 Every six months the model is updated according to changes in the Consumer Price Index and other costs which directly influence growing costs in order to fix a model (or standard) fee for the forthcoming six-monthly period. Once the 'model fee' is determined by the Committee, each processor may negotiate with its growers a number of adjustments reflecting market conditions and throughput. The fee paid to growers is a result of altering the 'model fee' by these adjustments. These adjustments are ratified by the Committee or, if in dispute, can be taken to the Committee for resolution. Administratively determined adjustments for market conditions and throughput are agreed between each processor and its growers and automatically approved by the PMIC if within a certain percentage of the cost model. If beyond this percentage then the processor only must demonstrate that there had been no abuse of market power in arriving at that level.
- 5.16 Appendix 5 contains a list of those factors taken into account in determining the model fee and includes the model fee payable from January 1999. The model fee is currently set at 49.58 cents per bird, with the standard annual farm throughput at 302,032 birds per 42,000 square feet.
- 5.17 Both the model fee per bird and the ratified standard fee for each processor are published in the Government Gazette. The gazetted fees over the period January 1993 to January 1999 are included in Appendix 6.
- 5.18 As noted in the previous section on approval of agreements between growers and processors, grower returns may be further influenced by a pooling system used to rank individual growers according to efficiency criteria (eg. feed conversion ratio and mortality).
- 5.19 Under the pooling system, growers who demonstrate sub-standard performance over a period of one year may have their contracts terminated. In this instance, "inefficiency" is defined as a level of performance that is more than three per cent below a specific group average.

## **SUBMISSIONS**

- 5.20 It was consistently argued by growers in their submissions that deregulation of the industry would expose growers to unequal market power in contract negotiations with processors. It was further argued that exercise of that market power by processors, at least in the short to medium term, would cause growers to receive grower fees which would be below that which would prevail if that market power did not exist.
- 5.21 Growers argued that in the absence of collective contract negotiations, growers would be at a disadvantage with respect to fee negotiations and other matters.
- 5.22 Mr A. and Mrs M. Vella (growers) commented:

*“Under the present system where the PMIC sets the standard growing fee, we have a system which ensures we get a fair return for our investment and labour. We also have peace of mind that our interests are being fairly looked after. If the PMIC and the legislation was removed and we had to negotiate individually, we would be at a severe disadvantage. We do not have the negotiating skills to match a company like Inghams and we fear we would be forced to accept a growing fee which would allow us to live, but not allow for upgrading of equipment and put something away for our retirement.”*

5.23 Mrs D. Jansen (grower) commented:

*“Having the PMIC to set a guideline price for growing chickens and settling disputes is a major factor in the security of buying and owning a chicken farm. As you see chicken farming isn’t like most other farming. We have little control over the product we produce. Having the PMIC means that one powerful body can negotiate with another powerful body, the processor, to determine a fair base price for everyone. The PMIC sets a guideline fee and the growers collectively and the processors negotiate around that fee. The growers then compete with each other in a pool system to obtain that fee. Who would benefit from the extra costs involved if we had to fight individually for a fair price, the solicitors????”*

5.24 Mr A. Sternaras (grower) commented:

*“The poultry industry is not comparable with other primary industries, as for starters we do not own the bird, and we have no say in the feed, density, pick up procedure (age) and marketing of the end product, as we are only poultry rearers, which is the system the processors want. Our income is calculated on a model in conjunction with processors and set by the Poultry Meat Industry Committee. You cannot get a fairer way of setting prices because all parties are involved in the process.”*

5.25 Mr G. Lee (grower) commented:

*“..a standard growing fee is paramount to growers survival in this region. A standard growing fee is the basis on which financial planning including equipment upgrading and employment, and loan approvals are made. It is also essential for providing stability and security within the industry, thereby providing confidence and willingness on the part of growers to direct their energies into trying new management practices and growing a quality product. This stability is not only of benefit to the growers but the processors also know that they can reliably supply their product, and at a stable price.”*

5.26 Mr B. and Mrs M. Virtue (grower) commented:

*“Under the current regulated industry, legislation protects all parties. Contract growers can confidently calculate estimated annual income, develop management plans and effectively budget. Pool system payments add competition between growers and provide incentive for efficient, quality production. With effort and enterprise, it is possible to be rewarded with a deserved profit and quality of life. Processors are required to negotiate a fair payment to contract growers. Processors enjoy an environment of free competition within the market place and to gain and maintain their market share must address aspects such as product quality, price and value adding, as*

*well as other aspects of business efficiency. Consumers can be assured that due to the current competitive market environment, and the stable organisation under which contract growers operate, that they are able to select from and purchase at the right price, the best quality product available.”*

5.27 Growers and grower organisations believed that the determination of the ‘standard’ fee and the functions of the PMIC in approving agreements are essential elements of providing growers with countervailing market power against processors. They further stated that these provisions do not ‘restrict’ competition, but rather they ensure that growers have some chance of remaining viable.

5.28 NSW Farmers’ Association Poultry Meat Group made the following comments about the level of competition which presently exists between growers with the Act in place:

*“The Poultry Meat Industry Act has not reduced competition between growers, provided that it is accepted that producers must produce at the actual cost of production or better. Because of this competition NOT ONE GROWER IN NSW receives the so-called “set price” established by the PMIC. There are a number of important concepts discussed below:*

- (a) Growers compete with each other through a “pool” system.*
- (b) Growers do not receive the PMIC “set” or “Standard” price*

*This system has been established with the agreement of the growers and processors for all chicken growers. Growers are “ranked on their performance by a series of key indicators, which may differ slightly from processor to processor. Each processor runs their own “pool” which extend over different ranges.*

*Even with this system in place, there is surprisingly little spread between the better than average growers and the lower than average growers in terms of feed conversion, given that all the inputs are the same. The way the “pools” operate is that any grower who performs just 3% lower than the “average” grower for more than a number of batches may be terminated by the processor. Growers who perform just 5% lower than the average may be terminated immediately. Terminated growers may in some cases be able to find positions with another processor or may leave the industry.*

*By a quirk of statistics the following points should also be remembered regarding the “3% below and you’re out” system:*

- as feed conversion numbers fall, “3%” becomes a proportionally smaller number. Growers can be terminated for smaller and smaller numeric deviations from average, in other words, standards are becoming more and more exacting.*
- by definition there will always be 3% of growers below average, so there is pressure on all growers all the time to stay “in the race”.*
- the average grower is a moving target, as “less than average growers” leave the system the overall grower average rises and a new group of growers finds themselves at risk. Processors are getting better and better performance from the grower “pool” for which they usually do not have to pay.*

*This system relies totally on equality of inputs by the processor to be effective. In fact this is not always the case, with processors manipulating feed formulations or the age of pick up and neither providing this information to the growers nor correcting the "pool" to reflect this. Thus it can be said that any corruption in the "pool" system such that it does not actually reflect the genuine competitive efforts of the growers against each other is entirely a result of processor manipulation by processors.*

*Even with the processors ability to manipulate the "pool" the growers are still happy to compete under this system and they do compete strongly.*

(c) *The "pool" payment is not the only determinant of a growers income, but is the only source.*

*The payment to a grower is determined by the fee negotiated with the processor and on that grower's position in the "pool". The per annum gross income is determined by the "throughput" that is the number of batches of birds that the grower produces for the processor and by how many birds (density) there are in each batch. Processors can manipulate a grower's income if they wish by altering the density or the number of batches per year.*

*Similarly, if the processor through poor marketing or an exotic disease crisis loses demand, the growers will "share the pain" through reduced throughput. Because they are tied to the processor by contract, they have no way to rectify this situation without the processors help. Many Red Lea growers came perilously close to bankruptcy during the Avian Influenza crisis in 1997.*

(d) *worse than average growers leave the industry*

*This is because of the structure of the industry and that fact that worse than average growers will be terminated by the processor. Given that by definition there will always be growers at 97% of average or below, there will always be growers at imminent risk of termination. The pressure to compete is intense and industry performance has increased rapidly.*

(e) *average grower performance is rising rapidly as a result of this competition and other factors*

*Because of the competition between growers, the standard of management (and to a lesser extent equipment) has been improving rapidly for at least the last 15 years. Notably the rate of increase in performance of the grower population increased more rapidly once countervailing power legislation was introduced.*

(f) *new growers can enter the industry*

*Unlike other states, where the number of farms was regulated, there is nothing under NSW legislation preventing new growers entering the industry. All they need is the finance, a farm and a contract with a processor.*

(g) *effects of removal of the Act*

*Removal of the current powers of the PMIC is likely to*

- *force the growing price for the birds below the level that would include reinvestment and adequate repairs and maintenance*
- *likely bankrupt two groups of growers in particular - those new entrants with high debt servicing requirements and those forward thinking growers who have invested heavily in improved housing and equipment. Neither group would be considered “inefficient” or “bad” growers.*

*It is likely that any “gain” that would result from a reduced growing fee would be passed directly to the processors. The “gain” would be greatest for those processors who could coerce their growers most effectively, or for those with the poorest growing standards.”*

5.29 Processors on the other hand, argued that the current regulatory arrangements are outdated, inflexible and anti-competitive.

5.30 They argued that there are significant differences between individual farms in factors such as input costs, accounting practices, opportunity cost values for land and labour, wealth and debt levels. Since the introduction of the legislation, the industry has moved from one where the processor requirements of their growers were very similar to an industry where processor requirements are significantly differentiated and hence their grower costs are also significantly different. The current price mechanism of a ‘model’ fee is no longer relevant as there is no such thing any more as a ‘model’ farm for the whole industry.

5.31 In addition, the present arrangements have a limited variance in the range of prices that growers receive and thus do not fully reward the most efficient growers and penalise the least efficient growers, and thereby maximise efficiency.

5.32 Sunnybrand Chickens Pty Ltd (processor) made the following comments about the current regulatory arrangements:

*“Having the PMIC set and regulate agreements between growers and processors has the benefit of providing a third party in these negotiations and removing direct confrontation, BUT most of the benefits are in the growers favour with the costs carried by the processor. ...this procedure removes the grower from market reality by ensuring a return, but most notably allows no flexibility to the processor in managing the cost of product purchased from growers.*

*At this stage the total cost borne by the processor as the standard growing fee is set with a mechanism in place that restricts the range of payment from the most efficient to least efficient grower. This range is not wide enough and does not allow the processor sufficient ability to deal with the least efficient growers who in fact are selling an overly valued product to the processor, via the standard growing fee, and are being subsidised by the more efficient grower.*

*The ability to ‘free’ this anomaly is necessary, as the existing mechanism does not work efficiently, and any time delay in disciplining an inefficient grower is too great, and has*

*already cost the processor the standard growing fee from inefficiently produced product.”*

5.33 Stegges Limited (processor) made the following comments:

*“The current industry structure with industry-wide negotiations over critical issues such as price (in this case the ‘growing fee’) are broadly ‘anti-competitive’ because:*

- *they result in agreed, fixed prices across the whole industry;*
- *they can result in ‘lowest common denominator’ outcomes, where efficient participants (both processors and growers) are largely compensated or incur costs at the same rate as less efficient operators, and hence quality, innovation and feed conversion efficiencies are not promoted; and*
- *negotiations under the current structure present opportunities for collusion between industry participants - this was the view of the ACCC, expressed at paragraph 8.13 of its Determination on Inghams’ application for authorisation in SA dated 9 April 1997.”*

5.34 In a joint submission, Inghams Enterprises Pty Ltd, Baiada Poultry Ltd, Cordina Chicken Farms Pty and Red Lea Chickens Pty Ltd (processor) expressed the following views on the current regulatory arrangements:

*“The current structure is based upon the industry as it was many years ago, when there was a clear need for a strongly regulated environment between Growers and Processors. The industry has now matured and the old regulatory regime does not accommodate the aspirations of many Growers and Processors, for such things as:*

- (i) *Less heavily regulated and far more flexible relations between Growers and Processors - for example, under a less regulated regime, a Processor may offer a range of different growing arrangements to its Growers, to accommodate different Growers’ wishes, as the acceptability of risk and length of contractual term varies between them; and*
- (ii) *A closer working relationship with Growers in which appropriate new investment is encouraged and rewarded.*

*Overall, a more flexible and less intrusive regulatory environment is likely to deliver better outcomes for both Growers and Processors (with interests of both parties safeguarded by legislation such as the ‘unconscionable conduct’ provisions of Part IVA of the Trade Practices Act).”*

## DISCUSSION

5.35 On the basis of the submissions, proponents of the PMIC approving contracts and determining standard growing fees argue that this provides necessary countervailing power to growers, and further, that it enables grower fees to be set at a level which reflects ‘real’ costs rather than cash costs, ie. they include an allowance for ‘biosecurity’ measures and debt servicing. This in turn contributes to more efficient levels of investment by growers.

- 5.36 Alternatively, processors argue that these arrangements limit the range of growing fees which they can pay, which in turn acts as a disincentive for growers to innovate and improve product quality. Processors also argue that the current arrangements fail to promote positive relations between processors and growers and hence there is less likelihood of processors offering contractual terms and investment opportunities to growers which may otherwise be of mutual benefit.

### **How is Competition Restricted ?**

#### *Contract Agreements*

- 5.37 The requirement to have contract agreements approved by the PMIC may restrict competition to the extent that certain contracts are disallowed, preventing processors and growers entering into alternative, possibly more flexible, growing arrangements more suited to meeting each others requirements and local conditions.
- 5.38 While there may be potential benefits from the PMIC's involvement in contract approval, a concern of the majority of the Review Group is that growers have largely relinquished to the grower members of PMIC, their responsibility for ensuring contracts are appropriate to their needs. Consequently, a more generic approach to contract development has occurred in the NSW poultry industry relative to what might otherwise be the case. The general effect has been the development of contracts which fail to fully address the range of commercial risks faced by growers, leaving their business operations open to an increased level of intervention by processors. For example, growers expressed their concern over areas such as pick-up times, trial feed batches, and variation in the quality of day old chicks. Ideally these issues should be addressed within contract agreements.

The grower representatives on the Review Group acknowledge that the current legislation provides so little effective countervailing power to growers as to be inadequate to force these critical issues to be considered within contracts.

- 5.39 To the extent that the role of the PMIC in overseeing contracts between processors and growers has acted as a disincentive to individual negotiations between growers and processors, then a further effect of the PMIC's contract approval role may be to stifle the emergence of more efficient vertically integrated or cooperative grower/processor arrangements.

The grower representatives on the Review Group noted, however, that there were processor negotiating groups currently operating within the current Act, and that the levels of cooperation were a direct function of the level of effective countervailing power and personal relations within the processor/grower groups. The PMIC was called upon to assist in the management of disputes caused by these direct negotiations.

#### *Setting Standard Growing Fees*

- 5.40 The power of the PMIC to determine an indicative industry growing fee to be used by all growers and processors as a starting point for fee negotiations may restrict

competition by limiting the range of prices at which growers are prepared to offer growing services. The assumption underlying the use of the model farm concept to determine an indicative industry growing fee is that the average cost of production for the whole industry should be used as the basis for setting fees paid to individual growers. However, because of the different markets that processors cater for, their different productivity criteria and the different production systems of their contract growers, production costs of growers may vary across processors.

The grower representatives on the Review Group argued that production costs do not vary between different processor groups. There should be analytical evidence, therefore, presented by the Review Group to demonstrate the argument above.

- 5.41 Administratively determined grower fees which are set initially on the basis of an average industry cost model will only partially mimic the range of prices which would otherwise apply and therefore will be less effective than open price competition in rewarding relative differences in efficiency, not only between growers, but between processors as well. While the pooling arrangement takes into account efficiency differences between growers to some degree, it is recognised that it does not impact on the total growing fee paid by a processor to that processor's growers, given that each processor pays a different fee.
- 5.42 While the effects of such an arrangement may be to increase grower returns on an industry wide basis in response to instances of market power abuse by processors, growers may be over compensated. This may occur because market power abuse (to the extent that it would be significant) is likely at any point in time to be limited to a proportion of the industry, rather than the entire industry, and is likely to be sporadic rather than continuous. It should be noted, however, that the extent of any over compensation will be constrained to that level of grower fee, at which point, processors consider it more beneficial to invest in their own growing facilities.
- 5.43 Consequently, there are two potential efficiency effects. First, through standardisation of contracts and fees efficient growers will be penalised, while less efficient growers will be rewarded. Second, to the extent that these arrangements provide growers with countervailing power in excess of that required to address instances of market power abuse by processors, it follows that there will be an income transfer from consumers and processors to growers, with attendant efficiency losses. These efficiency losses will be in the form of resources being attracted into/or maintained in the poultry industry at the expense of other sectors of the economy, with consequent reductions in economic growth.

The grower representatives on the Review Group believed that the critical issue is whether the range of growing fees at which growers are prepared to offer their services under the current legislative arrangements is appropriate. No analysis has been carried out of the 'real' versus the 'visible' costs of production and the extent of countervailing power which growers possess to negotiate a suitable price that accurately reflects the former. In this context, real costs refers to the various forms of investment required to maintain ongoing viability of a farm, such as investments in biosecurity measures.

The grower representatives on the Review Group were of the view that the issue of growers being over compensated by the current arrangements had not been proven, and even it were true, then no public benefit test had been undertaken on whether that compensation resulted in a net public benefit.



## 6. OPTIONS AND EVALUATION

### INTRODUCTION

6.1 A task of the Review Group was to consider alternative means of achieving the objectives of the legislation including less competition restricting and non-legislative approaches. The Review Group therefore considered the following options.

#### *Legislative Options*

- (i) Option 1- the status quo, but with alterations to reflect the current operation of the Act and to provide for exemption from the *Trade Practices Act 1974*.
- (ii) Option 2- increased powers provided to the PMIC.
- (iii) Option 3- transferring the most competition restricting powers of the current PMIC (contract agreements and fee setting) to processor negotiating groups.

#### *Non-legislative Options*

- (iv) Option 4 - deregulation - authorisation by the ACCC.
  - (v) Option 5 - deregulation - other.
- 6.2 Option 1 represents the current arrangements. Option 2 is the current arrangements, but with strengthened powers provided to the PMIC. Option 3 involves delegating, through legislation, the more significant powers of the current PMIC to processor negotiating groups.
- 6.3 Options 4 and 5 involve repeal of the legislation. Option 4 is where industry participants seek ACCC authorisation of collective negotiations, i.e., processor negotiating groups, which is what the major processors and their respective growers have done in South Australia and Tasmania. Option 5 includes various non-regulatory options such as growers individually negotiating with processors, the voluntary formation of producer groups and the increased integration of processing and growing activities.
- 6.4 In this Chapter, each of the options considered by the Review Group are detailed and the public benefits and costs of each option are discussed. The following chapter contains the Review Group's overall assessment and recommendations.

### OPTION 1 - MAINTAINING THE CURRENT LEGISLATION

#### Description

- 6.5 *Collective bargaining between growers and processors.* The PMIC determines guidelines for contract agreements and an initial industry wide growing fee which is then used as the basis of negotiations between processors and their growers.
- 6.6 *Grower ability to negotiate independently.* Any arrangement involving growers opting out of collective negotiation must be ratified by the PMIC.
- 6.7 *Resolution of disputes arising from renewal of contracts, including disputes relating to initial growing fees.* The PMIC has no arbitral powers. Independent members of

the PMIC may act as mediators if disputes arise and the Minister may also appoint mediators.

- 6.8 ***Resolution of disputes relating to existing contract terms and conditions other than the growing fee.*** The PMIC may act as mediator but it has no arbitral powers. The Minister, however, may appoint an arbitrator.
- 6.9 ***Resolution of disputes relating to the growing fee under existing contracts.*** Independent members of the PMIC may act as mediators (existing contracts allow for arbitration).
- 6.10 ***Requirement for a written contract.*** Written contracts are a compulsory requirement of the PMIC.
- 6.11 ***Examination and approval of agreements.*** The PMIC examines and approves all agreements.

### **Discussion and Evaluation**

- 6.12 This option involves retention of the current legislation with all of its existing provisions. The grower members of the Review Group wanted it pointed out that even with the status quo option there would need to be changes to the current Act to “confirm” current industry practices and to recognise the *Trade Practices Act 1974*. Those provisions which have the greatest potential to restrict competition are the centralised fee setting and contract approval functions of the PMIC and arrangements applying to opting out.
- 6.13 The original intent of these arrangements was to provide poultry producers with countervailing market power against poultry processors. As discussed in the previous chapter, however, centralised contract approval and fee setting may have a number of adverse effects which may detract from resource use efficiency and industry competitiveness.
- 6.14 For example, a process whereby an industry cost model is used to administratively set an industry wide growing fee (with administratively determined adjustments for market conditions and throughput) for the purpose of countering instances of market power abuse may overcompensate growers with consequent efficiency costs.
- 6.15 Furthermore, by introducing administrative ‘rigidities’ into price signals and contractual arrangements, growers may be insulated from market developments, resulting in delayed grower adjustment to changes in the business environment, and therefore an increased risk of business failure and higher economic and social costs.

<p>The grower representatives on the Review Group were of the view that even without the present legislative arrangements, the nature of their business and the processor’s ownership and relationship with growers, meant that price signals are not available to growers.</p>
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- 6.16 In addition to the possible impact of the *Poultry Meat Industry Act 1986* on the efficient allocation of resources and business competitiveness, the Review Group considered it appropriate to consider the effect of the legislation under review to investment stability

in the poultry industry, regional development in NSW, the level of investment by producers in disease control and transaction costs.

### *Investment stability*

6.17 Proponents of the current arrangements argue that centralised contract approval and fee setting provide benefits in the form of a more stable investment environment because growers have greater confidence in the prices they will receive and financiers are more likely to offer long term finance. The natural extension of the argument that regulated price setting provides for a more stable investment environment is that governments should similarly regulate prices throughout the economy. Under National Competition Policy government intervention to promote investment stability in a particular industry requires evidence of market failure in the form of under-investment. In the current review no evidence was available to suggest that credit markets would fail in the absence of price and contract regulation to provide an appropriate level of finance to the poultry meat industry. The nature of this proposition favours a conclusion that investment stability is best viewed as an ‘incidental’ rather than a primary benefit or objective of the *Poultry Meat Industry Act 1986*.

The grower representatives on the Review Group disagree with this argument on the basis that it implies that all industries exhibit similar structural characteristics and operate under identical conditions of market power and therefore should be treated identically. The view of the grower representatives was that investment stability might just as easily be fundamental and that this was unable to be determined because there has been no real analysis. Whether or not it is incidental or fundamental, the grower representatives believe that the net effect of the Act has included the development of some small amount of investment stability which is nonetheless offset by the instability of supply (throughput) of birds.

6.18 Nevertheless, the proposition that regulated price setting and contract approval provides investment stability may be questioned. For example, while these arrangements may provide a degree of income stability, which may be viewed favourably by lenders, regulated prices have also resulted in industries becoming less competitive, losing market share, and therefore becoming less attractive to commercial lenders. In the case of the NSW poultry industry, the continuation of regulated price setting and contract approval therefore raises the possibility of NSW growers becoming less competitive and losing market share, either to processors or to producers in other states or overseas.

In response to these arguments the grower representatives on the Review Group were of the view that NSW growers are highly competitive as reflected in the increasing trend in poultry consumption relative to other meats.

The grower representatives on the Review Group also expressed the view that the competitiveness of NSW growers under the Poultry Meat Industry Act should also take account of the lower growing fees paid in NSW relative to the fees in five other states versus the retail prices in each state. In short there is no evidence that regulated price setting and contract approval has resulted in this industry being less competitive as there has been no objective analysis, only theory.

6.19 Regulated prices may also have the effect of insulating financiers from the true economic conditions and prospects of an industry. Consequently, financiers may view a regulated industry with a degree of over-confidence and producers may be encouraged to over-capitalise their business resulting in increased debt servicing problems and business failure. Effectively, growers are insulated from market signals leading to delayed farm business responses, and therefore, increased adjustment costs.

The grower representatives on the Review Group made the following points in response to these arguments:

- growers are insulated from real market signals in any event as they have no real contact with the market other than that provided to them by the processor. There is for example, an absence of a public auction system to allow open market feedback to the growers;
- the processor has complete control over the number of birds placed on a growers farm in a year, and may terminate a growers contract at any time for many possible reasons within contract requirements. Financiers are aware of this and are therefore unlikely to overvalue the growers business for this reason.

6.20 A further source of investment instability associated with regulated industries relates to resources being drawn, artificially, into the regulated industry at the expense of other local input competing industries. Consequently, any investment stability benefits received by poultry growers, will be offset by investment instability which is created in other industries.

The grower representatives on the Review Group were of the view that when examining investment stability that consideration should be given to throughput instability in the industry and the need for some small level of stability to offset short duration contracts and considerable investment into highly specialised housing and equipment.

6.21 The majority of the Review Group therefore concluded that investment stability benefits provided to the poultry industry will be offset by increased adjustment costs in the regulated industry, and by costs imposed on input competing industries.

The grower representatives on the Review Group were of the view that some small level of investment stability is needed to be provided to the industry to offset the throughput instability, short duration contracts and considerable investment into highly specialised housing and equipment.

### ***Regional development***

6.22 In relation to regional development the Review Group identified two opposing arguments. The first is that income transfers to poultry producers generate positive regional multiplier effects. Alternatively, there are strong efficiency and equity arguments for not using regulated commodity prices to encourage regional development. For example:

- it provides a competitive advantage to one regional industry over another, such that the net effect on development in a particular region is negligible, or negative;
- it provides a disproportionate competitive advantage to those regions with most poultry producers, such that the net effect on regional development, across regions, is again negligible or negative; and
- it puts governments in the position of ‘picking winners’, rather than allowing this to occur through market processes, with not only the above mentioned efficiency costs, but further public costs as regional adjustment problems occur when either, the assisted industry becomes less competitive, or when government assistance is withdrawn.

- 6.14 This form of regional support is also inequitable, not only because support is provided only to certain industries and certain regions, but because poultry processors and consumers, rather than taxpayers as a whole, are required to fund the arrangement.

The grower representatives on the Review Group were of the view that the regional development argument rests on the assumption that the Act actually increases returns to growers, however, this had not been proven.

- 6.24 It follows that less distortionary and more equitable approaches to regional development will involve taxpayers generally, rather than poultry processors and consumers, funding services which address relevant forms of market failure, such as regional communities having poor information and skills in relation to local development opportunities. Increasingly, governments are also choosing to address regional development by focussing on social justice issues, such as access by regional communities to government services.

- 6.25 A further counter argument to the proposition that the current arrangements promote regional development is one put forward by processors. They argue that in the absence of the current arrangements there would be a significant increase in the size of growing facilities in order to capture scale economies, and further, that these facilities are more likely to be located outside of the Sydney basin, in regional locations, due to less restrictive environmental requirements and cheaper land prices. This is supported by recent changes with expanding growing facilities evident in the Goulburn region.

The grower representatives on the Review Group countered that it is the processors who determine the location of farms, and who allow farms of a certain size to be built. It is the processors who have argued repeatedly that farms must be within one hundred kilometres to a processing plant, which has largely precluded the development of farms outside the Sydney Basin except where they have chosen to build a country based processing plant. In addition there must be adequate return on investment to allow for further investment, and it is these returns (even in the face of extensive industry financing) that is hampering further investment on a large scale.

- 6.26 The majority of the Review Group concluded that regional development benefits provided by the *Poultry Meat Industry Act 1986* to a particular industry or region could be offset by matching costs imposed on other regional industries and regions. It was further concluded that there are other more effective and more equitable means of addressing the regional development concerns of government.

### ***Investment in Disease Control***

- 6.27 The Review Group also identified two opposing arguments which are relevant to an assessment of the impact of the *Poultry Meat Industry Act 1986* on the incidence of disease in the NSW poultry industry. The first is that to the extent that higher growing fees are achieved through the operation of the current legislative arrangements, investments in disease control will be more affordable for poultry producers. The counter argument is that the use of regulated commodity prices to address disease concerns is inefficient on the basis that:

- any benefits from increased on-farm investments in disease control may be offset by less efficient producers being maintained in the industry for longer than otherwise. The reduced efficiency and increased adjustment costs faced by these

- producers may result in an industry with a greater proportion of producers less able to commit resources to disease control; and
- such arrangements are ineffective in targeting disease control because there is no requirement for producers to spend any of the increased returns on disease control measures.

The grower representatives on the Review Group were of the view that evidence should be presented that less efficient producers are being maintained in the industry for longer than otherwise as a result of the activities of the Act, given that as a general rule in some cases the least efficient producers in a given processor group are achieving better farming performance than the average growers of only five years ago.

In addition, the grower representatives on the Review Group were of the view that there is no evidence of “increased returns” demonstrated and that there must be an adequate return on investment to allow for farm infrastructure development.

- 6.28 The argument that financial incentives, whether they be in the form of producer price subsidies or concessional finance, are required to achieve socially desirable levels of disease control also assumes that financial markets will fail to provide finance for on-farm investments which enhance the long term viability and profitability of the farm enterprise. There is little evidence to suggest, however, that there is significant ‘failure’ in credit markets, and consequently, business subsidies for the purpose of disease control could theoretically represent ‘wind-fall’ gains to individuals who could have otherwise accessed finance from commercial sources.
- 6.29 It should also be noted that industry assistance is not provided to any other rural industry on the basis of making disease control more affordable. More direct forms of assistance and intervention are, however, provided for in Commonwealth and State animal and plant health legislation and cost sharing arrangements. However, these are currently under review.

The grower representatives of the Review Group pointed out, however, that because of farmer interdependence in relation to disease control issues meant that the farmer who chose to cut costs to excess and ignore disease control costs (or for that matter animal welfare or any other “social” cost) effectively put the whole industry at risk. The Review Group had not assessed the effect of the minimum farm standard that was an integral part of the Act, and which tended to mitigate against such inappropriate behaviour.

The grower representatives on the Review Group also noted that there was no evidence of windfall gains in the absence of objective analysis and it was just as valid to assert that no such windfall gain existed.

- 6.30 While the above arguments question the effectiveness of the current arrangements in addressing biosecurity, the Review Group recognised the importance of biosecurity in the poultry growing industry. The Review Group considered that this issue was most effectively addressed under new arrangements (as discussed in Option 3) which require specific biosecurity provisions to be developed by grower and processor groups and formally recognised as a significant production cost. The grower representatives on the Review Group pointed out that appropriate systems to ensure that this actually happens will need to be developed under Option 3.

### *Transaction costs*

- 6.31 Proponents of the current arrangements argue that a further incidental benefit of the centralised approach to fee setting and contract development is that information and transaction costs may be reduced. Transaction costs include the costs of drawing up contracts, the costs of negotiating contracts as well as the costs of monitoring and enforcing contract conditions.
- 6.32 While there may be certain savings in transactions costs under the current arrangements, these arrangements are not costless. Furthermore, to the extent that the centralised approach to fee setting and contract approval gives rise to an increased level of subsequent fee and contract disputation between growers and processors, information and transaction costs may be increased.
- 6.33 In support of the proposition that the current centralised arrangement gives rise to increased levels of disputation between growers and processors, grower representatives of the Review Group offered a significant amount of anecdotal evidence relating to ‘unfair’ treatment of growers by processors under the current arrangements, and significant ongoing disputation in relation to issues such as batch and feed quality, pick-up times by processors and the constant demands by processors for shed and equipment up-grading.

The grower representatives on the Review Group were of the view that evidence should be presented that the centralised approach to fee setting and contract approval gives rise to an increased level of subsequent fee and contract disputation. The grower representatives stated that analysis of the level of dispute prior to and after the introduction of the Act suggests otherwise.

The grower representatives on the Review Group were of the view that the Act provides a healthy, negotiation method of dealing with any of these issues that would otherwise either have to go to court for resolution (with concurrent increases in transaction costs) or simply be “worn” by the grower (with an associated transfer of resources from grower to processor). In addition the disputes mentioned regarding batch and feed quality, pick-up times by processors and shed and equipment upgrades were beyond the status or the intent of the current Act. These are therefore not relevant to the current analysis of the Act other than to demonstrate the “background” level of disputation that the Act has reduced in the areas of contract negotiation and fee setting.

- 6.34 Savings in transaction costs do not, however, automatically lead to the conclusion that government intervention is warranted. For example, non-legislative cooperative arrangements may similarly reduce transaction costs. The grower representatives on the Review Group pointed out, however, that cooperative arrangements may breach the *Trade Practices Act 1974*.
- 6.35 The majority of the Review Group concluded that information and transaction cost saving associated with centralised fee setting and contract approval under current arrangements will be largely offset by information and transaction costs incurred by producers and processors in subsequent disputations about matters not adequately addressed in existing contracts. It was further concluded that savings in transaction costs could nevertheless be achieved by better contractual arrangements which are less restrictive of competition, as discussed in Option 3 (see paragraph 6.55).

The grower representatives on the Review Group were of the view that in the absence of any objective analysis, no such conclusion can be reached. It would be equally likely that there would be a domino effect forcing fees below the cost of production by processors by sequential intimidation of poorly

informed processor negotiating groups (who are nonetheless good farmers). Again, objective analysis would be required.

## OPTION 2 - MAINTAINING THE LEGISLATION AND STRENGTHENING THE POWERS OF THE PMIC

### Description

- 6.36 This option involves retention of the current legislation with all of its existing provisions. The PMIC would continue to determine an initial industry wide growing fee subject then to negotiations at the individual processor negotiating group level.
- 6.37 Parts of the Act would be reworded to reflect current practice and interpretation, and would include reference to the *Trade Practices Act 1974*.
- 6.38 Increased power would be provided to the PMIC to enforce decisions and there would also be strengthened penalty provisions for not having a contract and not operating in accordance with the contract.
- 6.39 The Act would be strengthened by including arbitration, conciliation and other forms of dispute resolution. The opportunity would be provided for arbitration on individual conditions within the contract and on individual components of the cost model and grower fee.

### Discussion and Evaluation

- 6.40 Proponents of this option argue that strengthening the Act to provide the PMIC with additional powers in relation to arbitration, conciliation and other forms of dispute resolution, and providing for statutory power to enforce decisions, would promote more harmonious relationships between growers and processors. They argue that where industry participants cannot resolve disputes they would be threatened with an independent body imposing a binding decision which neither party is likely to be fully satisfied with. Therefore, growers and processors would be encouraged to work together.

The grower representatives on the Review Group were supportive of including arbitral provisions in any future countervailing power legislation because of a direct linear relationship between the strength of the legislation in providing countervailing power to growers between states and the average reinvestment in new farms, with the resultant increase in economies of scale and increased industry efficiency.

- 6.41 It could alternatively be argued that, by strengthening the legislation, all of the adverse effects of Option 1 would be maintained, and possibly increased. Consequently, there could be:
- an increased potential for income transfers to growers with associated efficiency costs;
  - less scope for flexibility with respect to contractual arrangements between growers and processors;

- the increased powers of the PMIC would act as a further disincentive for contracts developed under the oversight of the PMIC to fully address the range of commercial risks faced by growers; and
- it would further 'sour' business relationships between growers and processors which would not be in the industry's interests in terms of promoting industry efficiency.

### **OPTION 3 - FEES AND CONTRACT ARRANGEMENTS NEGOTIATED BY PROCESSOR NEGOTIATING GROUPS**

#### **Description**

6.42 This option involves the collective negotiation of fees and other contract conditions at the individual processor negotiating group (PNG) level.

6.43 The conduct of PNGs would be governed by a *Code of Practice for Contract Negotiations* established as a regulation under the Act. The Code would contain provisions relating to:

- the composition of PNGs including their formation, discontinuation and reinstatement;
- appointment of delegates to PNGs;
- election of grower delegates;
- the functions of PNGs;
- procedures relating to the calling of PNG meetings;
- procedures relating to agreed resolutions and unresolved matters relating to all growers and to individual growers;
- dispute resolution procedures; and
- non-participating growers.

6.41 Contracts developed by PNGs would be required to comply with *Minimum Contract Guidelines* which would be established as a regulation under the Act. These guidelines would identify cost factors and principles which are required to be considered by growers and processors in negotiating the terms and conditions of contracts.

6.42 Growers would have the ability to 'opt-out' of collective negotiations, however, the *Code of Practice for Contract Negotiations* would contain provisions which govern opting out.

6.43 An industry body of similar composition to the PMIC would be maintained to oversight the operation of PNGs. The new industry body's functions would be to:

- assist in the establishment of PNGs;
- ensure appropriate implementation of the *Code of Practice for Contract Negotiations* governing the conduct of PNGs and the *Minimum Contract Guidelines* for contract agreements developed by PNGs;
- act as a mediator or appoint a mediator/arbitrator in PNG disputes relating to the *Code of Practice for Contract Negotiations* with the authority to refer a breach of

the Code or *Minimum Contract Guidelines* to the Australian Competition and Consumer Commission, or other government bodies.

- act as an industry forum for the dissemination of information;
- advise the Minister on matters relating to the poultry meat industry referred to it by the Minister; and
- monitor the effectiveness of the new arrangements.

6.47 The objective of this option is to facilitate contract negotiations between growers and processors in a manner which minimises the potential efficiency costs associated with the current regulated industry wide fee setting/contract approval arrangement. This is achieved by maintaining a legislative framework which:

- requires the negotiation of fees and contracts to be decentralised to processor/grower negotiating groups, rather than being set on an industry-wide basis; and
- allows for collective negotiation by growers, but in a manner which satisfies the requirements of National Competition Policy.

6.10 A two tiered system would replace the current single tier structure. The top tier would consist of an overseeing body with a similar composition to the PMIC. The new industry body would oversight the functioning of the new arrangements and facilitate the effective operation of PNG's. Should problems arise with PNGs the overseeing body would facilitate solutions through the provision of information and dispute resolution services.

6.11 The second tier would consist of a number of individual PNGs which would operate in accordance with a *Code of Practice for Contract Negotiations* and *Minimum Contract Guidelines*.

6.12 Among other things, the Code would include default dispute resolution procedures, however, these would not preclude alternative dispute resolution provisions being included in contracts, where there was agreement between the contracting parties. The dispute resolution procedures in the Code would include the following provisions.

***Matters Other Than Fees***

*For disagreements during contract periods on contract matters other than fees the aggrieved party would notify the other party and they would endeavour to resolve the dispute by discussion and conciliation through the grower delegates of the PNG in accordance with the Code of Practice.*

*If the parties fail to resolve their dispute by negotiation within 90 days they would then agree to endeavour to settle the dispute by mediation through the overseeing body or an external mediator agreed to by the parties or appointed by the overseeing body.*

*If the dispute has not been resolved within an agreed period of time or failing agreement within 28 days after lodgement of the dispute with the overseeing body, then the dispute would be referred to the Australian Commercial Disputes Centre (ACDC) to administer an arbitration. The arbitration would be conducted in accordance with ACDC Arbitration Guidelines. Unless the parties agree otherwise*

*these arbitration provisions will not apply to the extent of any dispute between the parties related to any alleged breach of a contract arising from gross negligence or the entitlement of either party to terminate a contract.*

In relation to the last sentence in the above paragraph, the grower representatives on the Review Group were of the view that the word "alleged" should be removed due to their concern that it provides processors with scope to unfairly terminate a contract on the basis of an allegation rather than the dispute first being subject to the dispute resolution procedures (including discussion, conciliation and mediation) within the Code of Practice which would assist in determining whether a substantive contract breach has occurred. The grower representatives were of the view that having disputes being subject to the dispute resolution procedures assists in ensuring that growers are not unfairly disadvantaged in terms of the cost of seeking recourse in relation to unfair contract terminations.

The grower representatives on the Review Group were of the view that growers should have the option of following all the dispute procedures through the PMIC which may include arbitration if no agreement is reached beforehand. The Act provides cost effective dispute resolution for growers and should apply to all disputes within a contract.

In response to the grower representatives comment, the processor representatives on the Review Group noted that the process as outlined above was principally in-line with that agreed with growers in South Australia and Queensland.

### ***Fee Disputes***

*For disagreements during contract periods on matters relating to fees the parties agree to first endeavour to settle the dispute, if applicable, by discussion and conciliation through the grower delegates of the PNG in accordance with the Code of Practice.*

*If the parties fail to resolve their dispute by negotiation within 90 days the parties would then agree to endeavour to settle the dispute by mediation through the overseeing body or an external mediator agreed to by the parties or appointed by the overseeing body.*

*In the event that the dispute has not been settled within an agreed period of time or failing agreement within 28 days after the appointment of the mediator the dispute would be submitted to external arbitration. The arbitrator would be a person agreed to by both parties. Failing agreement the arbitrator would be appointed by the overseeing body. The mediator would not be the same person as the arbitrator.*

*The costs incurred in mediation and or arbitration would be determined by the mediator and or arbitrator.*

### ***Renewal of Existing Contracts***

*If at the end of the contract period the parties have indicated their intent to enter into new contracts subject to satisfactory negotiation, then if issues arising from those negotiations have not been resolved in 90 days (through the procedures for agreed resolutions and unresolved matters relating to all growers) the processor and grower delegates would agree to endeavour to settle the dispute by mediation through the PMIC or an external mediator agreed to by the parties or appointed by the PMIC or if both parties agree such a dispute can be resolved by arbitration.*

## **Discussion and Evaluation**

- 6.51 The negotiation of growing fees and contract terms at the individual processor negotiating group level would allow contractual arrangements to develop which more closely reflect the local conditions faced by both growers and processors. For example, both growers and processors across the State face different cost structures, and in the case of processors, face differing markets and product returns. The negotiation of fees and contracts at the processor negotiating group level would therefore enable contracts to reflect these differences and thereby minimise any adverse efficiency effects of the current legislation.

The grower representatives on the Review Group noted that this is possible under the current Act by negotiated agreement on “discounts” to the fee between a processor and grower group. In addition the growers were of the opinion that the proposal would allow those processor/grower groups with fully depreciated farms to effectively undercut those with high standards of housing, equipment and biosecurity. This could give rise to a similar situation to that which exists in the egg industry and discriminates against coverage of “social” costs such as biosecurity and animal welfare.

- 6.52 In view of the inability of processors to develop contracts under the current legislation which more closely reflects their individual circumstances and efficiencies and the varying efficiencies of growers, Ingham’s and Cordina Chickens expressed the view that it is no longer acceptable to be forced by the NSW Government to negotiate an industry fee jointly with its competing processors. They further expressed the view that such negotiations are both anti-competitive and fail to recognise differences in shedding, farming practices, bird performance and other operational factors.

The grower representatives on the Review Group were of the opinion that there is nothing in the current Act that precludes Ingham’s and Cordina Chickens from developing contracts that closely reflect their own efficiencies.

- 6.53 An issue of concern to growers is the possible level of processor coercion and intimidation which they may be subject to when there is no requirement for agreements to be approved by a central body. The ability to opt out of collective arrangements is an issue which growers see as of prime importance in this regard. Option 3 has therefore been designed to provide grower protection against these forms of anti-competitive activity by requiring the upper tier body to develop a *Code of Practice for Contract Negotiations* which covers the issue of growers opting out of collective negotiations.

- 6.54 Growers who opt-out of collective negotiations would continue to have access to certain dispute resolution procedures through the overseeing body and they would continue to contribute to the financing of the overseeing body. Having opted out of a PNG a grower could only return once the contract they had entered into expired. Instances of processors coercing growers to opt out could also be referred by the overseeing body to the ACCC.

The grower representatives on the Review Group pointed out that the ACCC must have evidence on which to mount prosecutions and that this evidence is sometimes hard to find. It also takes time, and by necessity takes a “big stick” approach that may not be conducive to future relationships.

- 6.55 Under a less centralised approach to fee setting and contract development, arguably information and transaction costs may increase. Under Option 3, however, these costs may be substantially reduced by enabling collective negotiation between growers and their individual processor and by providing growers with more effective dispute

resolution procedures. Furthermore, by requiring growers to be more closely involved in contract negotiations, the level of ongoing disputation over contract provisions, such as those relating to batch and feed quality, would be substantially reduced.

6.56 The various provisions of Option 3 are designed to more effectively address potential market power abuse by processors, while at the same time imposing lesser regulatory restrictions on competition. The option also provides growers with increased and more effective regulatory protection through:

- the mandatory *Minimum Contract Guidelines*;
- the mandatory *Code of Practice for Contract Negotiations* with respect to processor/grower negotiations; and
- more comprehensive dispute resolution procedures.

The grower representatives on the Review Group expressed concern that the presence of the listed items was substantially irrelevant and that it was the content of the suggested documents that would be the determinant of whether the scheme would be viable. In particular the grower representatives observe Codes of Practices failing in many industries in the absence of strong punitive provisions for failure to follow the Codes. Growers thus reserve judgement on Option 3 unless and until such Codes are finalised.

6.57 These requirements are further reinforced by the threat that the overseeing body may refer breaches of the Guidelines or the Code to the ACCC. In addition, growers would be authorised to engage in collective negotiation. Under the current Act, both growers and processors are likely to be in breach of the *Trade Practices Act 1974*.

The grower representatives on the Review Group pointed out that any legislation, even if an update of the “status quo” option, would need to recognise the *Trade Practices Act 1974* as required by National Competition Policy. This would not be unique to any one legislative scenario.

#### OPTION 4 - DEREGULATION - AUTHORISATION BY THE ACCC

##### Description

6.58 As stated in paragraph 4.18, authorisation is a procedure under the *Trade Practices Act 1974* which provides protection from action by the ACCC or any other party for potential breaches of the *Trade Practices Act 1974*.

6.59 Authorisation is intended to be granted only where benefits to the public result from the conduct and the detriment's resulting from the conduct, including the lessening of competition, are outweighed by those benefits.

6.60 The process of authorisation is relevant to this review because both Inghams and Steggles in South Australia and Inghams in Tasmania have sought and been granted authorisation by the ACCC to make and give effect to standard growing agreements to be negotiated collectively with their respective contract chicken growers.

6.61 In anticipation of deregulation of the South Australian chicken meat industry (see Appendix 3 for further details), Inghams and Steggles respectively sought and gained authorisation for standard agreements to be negotiated collectively with their South

Australian contract chicken growers. Though there has never been any legislation regulating the contractual obligations between processors and growers in Tasmania, Inghams also gained authorisation in 1999 to collectively negotiate with its Tasmanian contract growers.

6.62 As an indication of the types of arrangements which have been authorised by the ACCC, the information contained in the shaded box relates to Ingham's South Australian authorisation.

#### **INGHAM'S SOUTH AUSTRALIAN AUTHORISATION**

Authorised arrangements include:

- collective negotiation of a standard five year growing agreement with contract growers;
- a code of practice governing collective negotiation attached to the growing agreement;
- the growing agreement provides for a standard fee payable to contract growers in each growing cycle;
- the fee is based on the concept of a 'model farm', where the fee each grower receives depends on his or her efficiency compared to other contract growers;
- Inghams meets representatives of the contract growers every six months to review the standard fee; and
- contract growers have the option of negotiating individually if they do not wish to be part of the collective negotiation process.

The ACCC identified the public benefits of the arrangements to include:

- assisting a smooth transition from regulation to deregulation, which will ensure lower adjustment costs for the South Australian chicken industry;
- providing chicken growers with countervailing bargaining power; and
- a decrease in production costs resulting from the collective negotiation process that should result in lower retail prices.

The ACCC decided to grant authorisation to Inghams for five years whilst the industry passes through its transition phase to a deregulated market. At the end of the authorisation period, the processor or the growers are free to reapply to the ACCC for another authorisation, either for the same arrangements or any other proposal which they put forward.

#### **Discussion and Evaluation**

6.63 The key difference between authorisation and Option 3 is that authorisation, as implemented in other States, does not provide for an upper tier overseeing body such as the PMIC. Another difference is that, unlike authorisation, Option 3 has no sunset clause.

6.64 The role of the overseeing body in Option 3 is to assist in the establishment of PNGs, to facilitate a smooth transition to fee and contract negotiations occurring at the PNG level, and to act as an independent body which is able to refer possible abuses of market power to the ACCC without fear of recriminatory behaviour by processors. Importantly, given the significant change in how fees and contracts would be negotiated in Option 3, the overseeing body is also required to report to the Minister on the effectiveness of the arrangements. Option 3 therefore maintains an overseeing body, not only to facilitate the PNG approach, but to provide growers with further protection against potential market power abuse while this change to less centralised fee setting/contract approval occurs.

6.65 If authorisation could provide sufficient protection to poultry growers against the misuse of market power by processors, there is the potential for these arrangements to be similar in effect to Option 3. Authorisation may, however, involve fewer administrative costs, but higher transaction costs given that such arrangements would need to be re-established on a regular basis and a number of authorisations may be required to provide full industry coverage. The Review Group was unanimous, however, in their concern that an immediate shift to authorisation may impose significant adjustment costs on a proportion of growers and that growers may have insufficient time to develop the level of negotiating skills required.

The grower representatives on the Review Group also noted that while the ACCC may be able to act on evidence of market power issues, it is not able to address other forms of market failure such as imperfect information and externalities.

## OPTION 5 - DEREGULATION - OTHER

### Description

6.66 If the legislation was repealed and the government no longer regulated the contractual obligations and behaviour between growers and processors of poultry meat in NSW, industry responses to deregulation could include:

- individual growers negotiating individual contracts with processors;
- growers forming voluntary groups, such as cooperatives, to increase their bargaining strength (authorisation may be required where the structure and functions of a cooperative result in a breach of the *Trade Practices Act 1974*);
- growers or their cooperatives, vertically integrating into the processing sector or into niche processed product markets; and
- processors expanding into growing operations.

### Discussion and Evaluation

6.67 As with Option 4 (authorisation), the Review Group concluded that complete deregulation may result in unnecessarily high adjustment costs. These options would require considerable re-skilling and additional investment by growers and processors.

6.68 In relation to the option of growers vertically integrating into the processing sector, growers have considerable expertise in chicken growing, their capacity to integrate downstream or upstream to enhance their market position appears very limited for the following reasons:

- the processors own or hold the exclusive patent rights for breeding stock;
- the processors own the multiplication farms and hatcheries necessary for the production of day old chicks;
- the costs of building process facilities that meet the standards required by state health and hygiene legislation is prohibitive;

- to win supply contracts for retail outlets it is necessary to guarantee daily supply of processed chicken. The scale necessary for such production is large and difficult to achieve;
- the operation of a chicken processing plant requires continuity of supply. This requires each processing plant to have between eight and twelve separate farms supplying it because for disease control reasons, growing farms only carry chicken of the same batch and rear that batch over a period of eight weeks; and
- the incumbent processors have considerable market power, often control the distribution system and have long term contracts with the major retail outlets<sup>19</sup>.

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<sup>19</sup> Australian Competition and Consumer Commission (1998), Draft Determination on Steggle's Limited and Others Application for Authorisation in Relation to the Collective Negotiation of Chicken Growers' Contract, Australian Competition and Consumer Commission.

## 7. OVERALL ASSESSMENT

### The Objectives of the Poultry Meat Industry Act 1986

- 7.1 The Review Group identified the objectives of the Act but found that they related to matters of process, such as establishing the PMIC, rather than clearly identifying the intended outcomes of the NSW Government.
- 7.2 The Review Group agreed that the primary market failure which the Act is intended to address is the avoidance of market power abuse by poultry processors of poultry growers. It was therefore agreed that this should be explicitly stated as the primary objective of the current or any future Act. By avoiding market power abuse by processors of poultry growers, through provisions which facilitate collective grower negotiation and improve the level of information available to growers, efficient levels of investment should be achieved in areas such as the adoption of new technology and disease control.

***Recommendation 1.** It is recommended by the Review Group that in the event of legislation specific to the NSW poultry industry being continued subsequent to this review, that the objectives of that legislation be changed from those which currently apply, to be an explicit statement of the outcomes intended to be achieved by the NSW Government and that it include the words “to avoid market power abuse by processors of poultry growers.”*

The grower representatives on the Review Group were of the opinion that the explicit statement of outcomes intended to be achieved by the NSW Government be broadened from those recommended above to include the words “to avoid market abuse by processors of poultry growers and to assist in addressing other forms of market failure such as biosecurity and imperfect information.”

### The Review Group’s Approach to Option Selection

- 7.3 In considering the various options discussed in the previous Chapter, it was necessary for the Review Group to distinguish between public and industry benefits and costs. In this regard it was agreed that:
- the avoidance of market power abuse and its potential to cause significant resource misallocation (inefficiency) is the primary public benefit which the various options should provide; and
  - that the preferred option is that which most effectively addresses this problem.
- 7.1 In relation to the second of these dot points ‘effectiveness’ was assessed in terms of the potential of each option to address market power abuse in a manner which least restricts competition. An important consideration in meeting this requirement was that the preferred option should involve minimal income transfers between processors and growers and associated efficiency costs (i.e., the avoidance of income transfers which are not directly compensating for market power abuse).

The grower representatives on the Review Group were of the view that 'effectiveness' should be assessed in terms of the potential of each option to address market power abuse and any such secondary public benefits as may be described weighed against the restriction of competition which may result. Under this approach the preferred option would be that which best balances all these needs to provide the greatest net benefit. This is on the basis that while abuse of market power may be the primary benefit, secondary benefits should also be considered. Otherwise, key secondary benefits such as regional development, transaction costs, externalities (such as biosecurity, animal welfare and pollution) and availability of appropriate market information, that may be significant, may be missed.

- 7.5 In addition to the approach to option selection outlined in paragraph 7.4, consideration was given to developments in other States. In this regard, Please note the direct quote from the National Competition Council's report on the National Competition Policy Second Tranche Assessment on page 4.

### The Review Group's Assessment

- 7.6 The majority of the Review Group was unable to support the current legislation (and Option 2 involving increased powers to the PMIC) on the basis that the industry wide contract approval and fee setting powers of the PMIC are unnecessarily restrictive of competition for the purpose of meeting the objective of the Act. The setting of grower fees with reference to a single 'farm model' fails to fully reflect differences in efficiency between growers. The masking of price signals in this way may not fully reward the most efficient growers and may overcompensate the least efficient growers.
- 7.7 Consequently, less efficient growers may be retained in the industry for longer than should otherwise be the case. The point where these growers become non-viable may therefore be postponed, at which time they will have higher levels of debt, lower equity, will face greater difficulties in adjusting from the industry and social costs associated with industry adjustment are increased.

The grower representatives on the Review Group were of the view that there is a lack of data to support the argument that the current arrangements are unnecessarily restrictive of competition and fail to fully reflect differences in efficiency between growers. They also were of the view that debt ratios have less to do with the efficiency of the grower (as they might have in other industries) due to the habit of more efficient family farmers to spend (and thus increase their debt ratios) on new equipment, biosecurity, animal welfare and other social costs. There is also an age factor due to increasing industry capitalisation and land costs. Recent entrants (usually younger better educated growers) almost always have a higher debt ratio.

The grower representatives on the Review Group were also unable to support the current legislation, but not for the reasons given above. The reasons why the grower representatives on the Review Group do not support the current legislation include:

- the lack of penalties (enforcement) - processors are still prepared to behave inappropriately so far as they are able; and
- the ability of processors to manipulate the pooling system. Processors can manipulate feed formulations or the age at pick up and neither provide this information to the growers nor correct the pool to reflect this.

- 7.8 The majority of the Review Group was particularly concerned that by establishing the PMIC as the sole 'approver' of contracts between growers and processors in NSW, that the current legislation has substantially shifted responsibility for contract development

from growers to the PMIC. Consequently, growers are poorly placed to ensure contracts adequately address the commercial risks they face which has in turn led to the situation where growers interpret certain actions of processors as market power abuse (eg. batch quality issues). Instead, these actions by processors, during contract periods, reflect a failure on the part of growers to ensure their contracts are comprehensive in this regard.

- 7.9 Furthermore, the transfer of responsibility from growers to the PMIC for contract development appears to have acted as a disincentive to closer interaction by processors and growers which has resulted in an industry characterised by extremely poor grower/processor relations which in turn detracts from industry efficiency.

The grower representatives on the Review Group do not support the contention that the current arrangements have substantially shifted responsibility for contract development from growers to the PMIC and the consequent suggestion that this has led to growers being poorly placed to ensure contracts adequately address the commercial risks they face. This is because the current PMIC is only involved to the extent proposed in Option 3, that is, it sets minimum contract guidelines and allows growers to negotiate with their processors to the extent that they are able to reach a new contract. Critically, the PMIC acts as an oversight body to ensure that procedures are carried out properly and that there has been minimal market power abuse in negotiation. It also acts to provide critical market information. Growers are of the view that there appears to be little analysis in this report of the differences between the wording of the current Act versus a broader analysis of the Act, regulations, guidelines and behaviours that have resulted from the current Act.

The grower representatives on the Review Group were of the view that the poor relationships between participants in the industry were not a result of the current legislative arrangements and that because other possible reasons for the poor relationships have not been given, the conclusion that the current legislative arrangements are responsible cannot be reasonably considered correct. In fact anecdotally speaking the best relationships are to be found in WA, which may be as a result of legislation or may be the result of personalities, or both.

- 7.10 While the majority of the Review Group acknowledged the potential for processors to abuse their market power, it was not presented with any evidence which cast significant doubt over the effectiveness of trade practices legislation in addressing this problem. The views of the ACCC expressed to the Review Group were that the poultry industry in NSW did not have characteristics which made it more or less susceptible to market power abuse than other industries, and that authorisation under the *Trade Practices Act 1974* is the ACCC's preferred approach to addressing imbalances of market power.

The grower representatives on the Review Group expressed the view that while the ACCC could deal with some cases of market power abuse it could do so only on the basis of (usually documentary) evidence, which is difficult to obtain. In addition, the ACCC may not prosecute "small" cases such as that which might be seen in likely cases. In any event, the ACCC has no power to address other forms of market failure.

- 7.11 While the majority of the Review Group agreed that authorisation may provide an efficient outcome, they were also concerned about the transaction costs associated with the authorisation process and the level of industry disruption, and hence public costs, which may be associated with changing too quickly from a highly regulated environment to one involving minimal or no regulation. The majority of the Review Group were of the view that having operated in a highly regulated arrangement growers may be poorly placed to immediately adapt to a more commercial environment. Consequently, a move to less restrictive legislation, is seen as desirable in terms of providing for a more orderly adjustment process.

The grower representatives on the Review Group noted that they were “at the coal face” daily and agreed that the level of disruption is likely to be significant, and that the Review Group did discuss possible financial and other assistance during any transition period. Growers did not necessarily agree that a move to “less restrictive legislation” is the most desirable outcome (see also previous comments regarding proposed Option 3).

- 7.12 The majority of the Review Group concluded that authorisation or the formation of cooperatives were options which may well be appropriate in the future, however, growers require time to adapt to less regulatory arrangements, particularly in terms of the development of negotiating skills.

The grower representatives on the Review Group informed the Review Group that they had been advised that the formation of cooperatives would require authorisation, and that authorisation does not appear to be a viable option owing to recent experiences with the South Australian authorisations.

- 7.13 The majority of the Review Group therefore favoured Option 3 for the NSW poultry meat industry whereby contract negotiation and fee setting is undertaken by individual processor negotiating groups. This option maintains a body similar to the PMIC to oversee the operation of PNGs.

- 7.14 The majority of the Review Group agreed that this body should be fully funded by those sectors of the industry represented on it.

- 7.15 The majority of the Review Group concluded that the proposed arrangement substantially reduces the potential for efficiency costs by transferring responsibility for contract negotiation and fee setting to individual grower/processor negotiating groups, rather than these being set on an industry-wide basis. The new arrangement will encourage contractual arrangements between processors and growers more suited to their local industry conditions and individual circumstances and will provide scope to better reward relative differences in efficiency among both processors and growers.

The grower representatives on the Review Group noted the success of the proposed arrangement will be entirely and absolutely dependent on the content and detail of the Code of Practice for Contract Negotiations and the Minimum Contract Guidelines. Growers are willing to discuss and develop these guidelines in good faith but will not support the proposed Option 3 until these guidelines are completed.

- 7.16 Because the arrangements under Option 3 involve collective negotiations at the individual processor level, it will be necessary to include in the new legislation explicit exemption from the *Trade Practices Act 1974* authorising this conduct.

- 7.17 Given that the current legislation has effectively transferred responsibility for contract negotiations from growers to the PMIC, under the preferred new arrangements whereby collective negotiation of fees and other contract conditions would occur at the individual processor negotiating group level, growers may initially be poorly placed in terms of their negotiating skills to negotiate directly with processors. The Review Group therefore agreed that it would be appropriate for the NSW Government to fund, for a three year period, independent consultants to assess the growing costs for growers in each of the processor negotiating groups. This would provide growers with a reference point from which they may wish to negotiate. The Review Group also agreed

to conduct an information forum on the operation of the new legislative arrangements for the banking sector in an attempt to facilitate a smooth transition.

The grower representatives on the Review Group also raised the issue of transitional financial assistance for growers forced into such structural change, particularly as regards financiers changing view of this farming industry when the current system is altered.

- 7.18 To provide for a measured approach to institutional change in the NSW poultry meat industry, the Review Group also agreed that at the end of the 3 year period there should be a review of the new arrangements. Subsequently, the arrangements could either be continued, authorisation of processor negotiating groups could be pursued, or voluntary cooperative arrangements could be considered.
- 7.19 The 3 year period will provide an opportunity to further assess the adequacy of the *Trade Practices Act 1974* and authorisation arrangements. Importantly, it will also provide for a period of time in which growers can more adequately consider their business responses and thereby minimise adjustment costs.
- 7.20 It is proposed that the new oversighting body in addition to its over-sighting and facilitating functions in relation to processor negotiating groups, have a reporting function to the NSW Government on the effectiveness of the arrangements for their initial term. The ACCC will also be requested to maintain a monitoring role.
- 7.21 The acceptance of Option 3 by the grower representatives on the Review Group is dependent on the development of a suitable and enforceable Code of Practice for Contract Negotiations and Minimum Contract Guidelines, a number of definitional issues and the development of suitable penalties for non-compliance.
- 7.22 The Review Group concluded that a committee be formed to prepare the Code of Practice for Contract Negotiations and the Minimum Contract Guidelines. This committee is to consist of the Chair and the two independent members of the PMIC as well as three grower and three processor representatives. The processor and grower representatives do not have to be PMIC members. Steggles/Bartter, Inghams and the independent processors will each be represented and there will be a corresponding grower representative on the committee.
- 7.23 The Review Group concluded that the committee have until March 2000 to agree upon the Code of Practice for Contract Negotiations and the Minimum Contract Guidelines. These will need to be submitted to the Chair of the Review Group to ensure they are consistent with Competition Policy principles before they are submitted to the Minister
- 7.24 If the committee is unable to reach agreement on the Code of Practice for Contract Negotiations and/or the Minimum Contract Guidelines then the committee will seek the Minister's guidance.

***Recommendation 2.*** *It is recommended by the Review Group\* that new legislation be introduced by the NSW Government, no later than June 2000, which repeals the*

\* Acceptance of this recommendation by the grower representatives on the Review Group is subject to the committee (referred to in recommendation 4) reaching agreement on a suitable and enforceable Code of Practice for Contract Negotiations and Minimum Contract Guidelines.

*existing Act and makes provision for the establishment of processor negotiating groups (PNGs) and an overseeing industry body of similar make-up to the current PMIC.*

**Recommendation 3.** *It is recommended by the Review Group\* that the new legislation contain the following provisions.*

- (a) *Responsibility for contract agreements and fee setting would be transferred from the PMIC to individual PNGs.*
- (b) *Collective negotiation of fees and other contract conditions would occur at the individual PNG level.*
- (c) *The conduct of PNGs would be governed by a Code of Practice for Contract Negotiations established as a regulation under the Act. The Code of Practice would contain provisions relating to:*
- *the composition of PNGs including their formation, discontinuation and reinstatement;*
  - *appointment of delegates to PNGs;*
  - *election of grower delegates;*
  - *the functions of PNGs;*
  - *procedures relating to the calling of PNG meetings;*
  - *procedures relating to agreed resolutions and unresolved matters relating to all growers and to an individual grower;*
  - *dispute resolution procedures;*
  - *non-participating growers;*
  - *arrangements which will apply in the event of non-functional processor negotiating groups;*
  - *penalty provisions against processors and growers (with quantum being decided by Parliamentary Counsel and NSW Agriculture);*
  - *clarification of 'opt-out' provisions; and*
  - *further detail of the transition period for renewal of contracts including time frames and use of agents.*
- Particular consideration should be given to provisions which require contract negotiations to be finalised at an appropriate time prior to the end of the current contract period.*
- (d) *Dispute resolution provisions would include those detailed in paragraph 6.50.*
- (e) *Growers would have the ability to 'opt-out' of collective negotiations, however, the Code of Practice would contain provisions which relate to opting out.*
- (f) *Contracts developed by PNGs would be required to comply with Minimum Contract Guidelines which would also be established as a regulation under the Act. These guidelines will identify cost factors and principles which are required to be considered by growers and processors in negotiating the terms and*

*conditions of contracts. Farm biosecurity standards are a specific issue to be considered within these guidelines.*

**Recommendation 4.** *It is recommended by the Review Group that a committee be formed to prepare the Code of Practice for Contract Negotiations and the Minimum Contract Guidelines. This committee is to consist of the Chair and the two independent members of the PMIC as well as three grower and three processor representatives. The processor and grower representatives do not have to be PMIC members. Steggles/Bartter, Inghams and the independent processors will each be represented and there will be a corresponding grower representative on the committee.*

*The Review Group concluded that the committee have until March 2000 to agree upon the Code of Practice for Contract Negotiations and the Minimum Contract Guidelines. These will need to be submitted to the Chair of the Review Group to ensure they are consistent with Competition Policy principles before they are submitted to the Minister.*

*If the committee is unable to reach agreement on the Code of Practice for Contract Negotiations and/or the Minimum Contract Guidelines then the committee will seek the Minister's guidance.*

**Recommendation 5.** *It is recommended by the Review Group\* that an industry body of similar composition to the PMIC be maintained to oversight the operation of processor negotiating groups. The industry body's functions would be to:*

- *assist in the establishment of PNGs;*
- *ensure appropriate implementation of the Code of Practice for Contract Negotiations governing the conduct of PNGs and the Minimum Contract Guidelines for contract agreements developed by PNGs;*
- *act as a mediator or appoint a mediator/arbitrator in PNG disputes relating to the Code of Practice for Contract Negotiations with the authority to refer a breach of the Code of Practice or Minimum Contract Guidelines to the Australian Competition and Consumer Commission, or other government bodies.*
- *act as an industry forum for the dissemination of information;*
- *advise the Minister on matters relating to the poultry meat industry referred to it by the Minister; and*
- *monitor the effectiveness of the new arrangements.*

**Recommendation 6.** *It is recommended by the Review Group\* that representation on the new oversighting industry body be similar to that under the existing legislation (as detailed below) and that the new industry body be fully funded by NSW poultry growers and processors.*

*Representation of the new industry body:*

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\* Acceptance of this recommendation by the grower representatives on the Review Group is subject to the committee (referred to in recommendation 4) reaching agreement on a suitable and enforceable Code of Practice for Contract Negotiations and Minimum Contract Guidelines.

- *four processor representatives (two associated and two independent [not Inghams or Stegges/Barrter]);*
- *four grower representatives (two associated and two independent [not contracted to Inghams or Stegges/Barrter]);*
- *two independent members who, in the opinion of the Minister, are skilled in negotiation or have expertise in commerce; and*
- *the Chairperson who is an independent member of the Minister's own choosing.*

*The quorum for voting purposes should consist of a majority of grower representatives and a majority of processor representatives. The role of the overseeing body is not to act as an arbitrator, however, the Chairman and the independents would be able to vote on matters pertaining to the responsibilities of the committee.*

***Recommendation 7.*** *As the arrangements under Option 3 involve collective negotiations at the individual processor level, the Review Group\* recommends that the new legislation include explicit exemption from the Trade Practices Act 1974 authorising this conduct.*

***Recommendation 8.*** *To facilitate a smooth transition to the new arrangements the Review Group\* recommends that:*

- *the NSW Government fund, for a period of three years, independent consultants to assess the growing costs for growers in each of the PNGs; and*
- *the Review Group conduct an information forum on the operation of the new legislative arrangements for the banking sector.*

***Recommendation 9.*** *The Review Group\* recommends that the new legislation be subject to review by June 2003.*

***Recommendation 10.*** *The Review Group\* recommends that the Australian Competition and Consumer Commission be requested to maintain a monitoring role in regards to the new arrangements.*

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\* Acceptance of this recommendation by the grower representatives on the Review Group is subject to the committee (referred to in recommendation 4) reaching agreement on a suitable and enforceable Code of Practice for Contract Negotiations and Minimum Contract Guidelines.

## APPENDIX 1: THE TERMS OF REFERENCE

### REVIEW OF THE POULTRY MEAT INDUSTRY ACT 1986

1. The review of the *Poultry Meat Industry Act 1986* shall be conducted in accordance with the principles for legislation reviews set out in the Competition Principles Agreement. The guiding principle of the review is that legislation should not restrict competition unless it can be demonstrated that:
  - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
  - (b) the objectives of the legislation can only be achieved by restricting competition.
2. Without limiting the scope of the review, the review is to:
  - (a) clarify the objectives of the legislation, and their continuing appropriateness;
  - (b) identify the nature of the restrictive effects on competition;
  - (c) assess the likely effect of any identified restriction on competition on the economy generally;
  - (d) assess and balance the costs and benefits of the restrictions identified; and
  - (e) consider alternative means for achieving the same result, including non-legislative approaches.
3. When considering the matters in (2), the review should also:
  - (a) identify any issues of market failure which need to be, or are being addressed by the legislation; and
  - (b) consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974* (Cth) and the NSW Competition Code.
4. The review shall consider and take account of relevant regulatory schemes in other Australian jurisdictions, and any recent reforms or reform proposals, including those relating to competition policy in those jurisdictions.
5. The review shall consult with and take submissions from poultry growers, poultry processors and other interested parties.
6. The Review Group shall present its report to the Minister for Agriculture by 30 September 1998.

**APPENDIX 2: LIST OF SUBMISSIONS TO THE JOINT REVIEW**

1	Mr	S & M	Xerri	45 Farm Road	MARSDEN PARK NSW
2	Mr	A & M	Vella	165 Taylors Road	SILVERDALE NSW
3	Mr	A & J	Clarke	138 Wisemans Ferry Road	CENTRAL MANGROVE NSW
4	Mr	Greg	Read	Com DPIE	CANBERRA ACT
5	Mr	JH & SE	Leembruggen	PO Box 219	BRANXTON NSW
6	Mr	J & P J	Watkin	219 Georges River Road	KENTLYN NSW
7	Mr	W S & V I	Sternbeck	12 Simsville Road	STROUD NSW
8	Mr	J M	Clarke	138 Wisemans Ferry Road	CENTRAL MANGROVE NSW
9	Mr	Ron	Hattam	Alderley Lane	STROUD NSW
10	Mr	KW & EG	Bowen	Briton Court Road	STROUD NSW
11	Mrs	Denise	Janssen	66 Babers Road	CORRANBONG NSW
12	Mr		Watsonia	Watsonia Poultry	THE OAKS NSW
13	Mr	John	Edwards	Terrace Pumps & Irrigation	RAYMOND TERRACE NSW
14	Mr	Robert	Noble	Bucketts Way	BOORAL NSW
15	Mr	A	Sternaras	291 Fairey Road	WINDSOR NSW
16	Mr	C J	Bowen	8 Cowper Street	STROUD NSW
17	Mr	G	Lee	330 Old Dyraaba Road	VIA CASINO NSW
18	Mr	B	Wand	Bo - Villa	BOORAL NSW
19	Mr	T	O'Brien	14 Myrtle Street	MINTO HEIGHTS NSW
20	Mr	I	Bowen	130 John's Road	WYONG NORTH NSW
21	Mr	B & M	Virtue	Wayandah Chicken Farm	SOUTH LISMORE NSW
22	Mr	I A	Dorney	Markwell Road	BULAHDELAH NSW
23	Mr	D & J	Alcorn-Smith	"Boatfalls"	CLARENCE TOWN NSW
24	Mr	J & F	Blackmore	400 Mill Creek Road	STROUD NSW
25	Mr	JS & PM	Madsen	Bloodtree Road	MANGROVE MOUNTAIN NSW
26	Mr	MH & JK	Eggelton	1644 Bucketts Way	BOORAL NSW
27	Mr	M G	Salloway	Northcorp Accountants	PORT MACQUARIE NSW
28	Mr	C & E	Williams	149 Kearsley Selections	KEARSLEY NSW
29	Mr	G & S	Brown	"Goodgerwirri"	QUIRINDI NSW
30	Mr	TJ & JA	Fuller	215A Richardson Place	CAMPVALE NSW
31	Mr	Malcolm	Wood	M J Wood Pty Limited	STROUD NSW
32	Mr	FF & D	Farley	Rosewynne	STROUD NSW
33	Mr	J I	McHugh	"Romilly Park"	BINNA BURRA NSW
34	Mr	Z & M	Wawrzyniak	"Glenalle"	QUIRINDI NSW
35	Mr	Kim	Evans	DPI Fisheries	HOBART TAS
36	Mr	A & B	McGhee	"Glenafton"	WAKEFIELD NSW
37	Mr	David	Lyll	"Hillview"	STROUD NSW
38	Mr	A J	Fairhill	Dungog Shire Council	DUNGOG NSW
39	Dr	Balkar S	Bains	9 Worthing Place	CHERRYBROOK NSW
40	Mr	I & M	Savas	56 Murrawal Road	WYONGAH NSW
41	Mr	IT	New	296 Pheasants Nest Road	TAHMOOR NSW
42	Mr	Max F	Bailey	16 Sandilands Street	CASINO NSW
43	Mr	Jamie	Wilson	2658 Bucketts Way	STROUD NSW
44	Ms	Heather	Ranclaud	"Karoola"	WILLOW TREE NSW
45	Mr	S S	Rangi	75 Nightingale Road	PHEASANTS NEST NSW
46	Mrs	J K	Khan	PO Box 2700	CASTLE HILL NSW
47	Ms	Marie	Andrews	Electorate Office	WOY WOY NSW
48	Mr	Albert R	Harvey	Markwell	VIA BULAHDELAH NSW
49	Mr	Arthur	Sternaras	Grenena Poultry Farm	WINDSOR NSW
50	Mr	P & K	Hutchinson	"Queensbury"	BOORAL NSW
51	Mr	Peter	Hamilton	Qld Chicken Growers Ass	SOUTH BRISBANE QLD
52	Prof	H M	Kolsen		No Address Given
53	Mr	Garry	Harvey	PO Box 74	RAYMOND TERRACE NSW
54	Mr	M & K	Peacock	"Clifford"	STROUD NSW
55	Mr	Digby	Rayward	District Veterinarian	LOCHINVAR NSW
56	Mr	R W	Ingle	1352 Main Road	GIRVAN NSW
57	Mr	Michael	Patten	Maitland Rural Repairs	LOCHINVAR NSW
58	Mr	Don	Flynn	Paterson Street	HINTON NSW
59	Mr	Digby	Rayward	63 Pywells Road	LOCHINVAR NSW
60	Mr	J W	Bowen	"Fairview"	STROUD NSW

61	Mr	V & A	Barry	50 Stroud Street	BULAHDELAH NSW
62	Mr	NS & PM	Matthews	Parkridge Rural Pty Ltd	LEPPINGTON NSW
63	Mr	Brett	Matthews	Parkridge Rural Pty Ltd	LEPPINGTON NSW
64	Mr	T W	Lewis	"Yathong"	MT VINCENT NSW
65	Mr	Gary	Gooch	Markwell Road	BULAHDELAH NSW
66	Mr	Mark	Fitzgerald	Sunnybrand Chickens	BYRON BAY NSW
67	Mr	Jo	Bell	Animal Liberation	SURRY HILLS NSW
68	Mr	M	Barry	189 Alderley Lane	STROUD NSW
69	Mr	Ross	Robinson	Lismore Poultry Club	LISMORE NSW
70	Mr	John	Clarke	Vic Farmers Federation	MELBOURNE VIC
71	Mr	J & P	Miller	1640 Bucketts Way	ALLWORTH NSW
72	Mr	H & V	Presker	15A Morpeth Road	WARATAH NSW
73	Mr	Norman	Bignell	"Marengo"	STRATFORD NSW
74	Mr	J	Ryan	33 Richardson Road	RAYMOND TERRACE NSW
75	Mr	M	Ryan	105A Lemon Tree Passage	SALT ASH NSW
76	Mr	Michael	Ditrich	36-46 Woolgen Park Road	LEPPINGTON NSW
77	Mr	John	Wilkinson	Luskintyre	LOCHINVAR NSW
78	Mrs	Margaret	Gariner	266 Aberglasslyn Road	MAITLAND NSW
79	Mr	F & E	LoConte	855 Werombi Road	THERESA PARK NSW
80	Mr	E D	Peacock	Great Lakes Council	STROUD NSW
81	Mr	Gordon	Trappel	PO Box 26	STROUD NSW
82	Mr	C	Parker	22A Tenth Street	WESTON NSW
83	Mr	M & B	Brooker	Summer Hill Road	VACY NSW
84	Mr	S & K	Bratfield	14 Nicholls Street	STROUD NSW
85	Mr	M G	Bratfield	159 Reidsdale Road	STROUD ROAD NSW
86	Mr	J	Biscan	PO Box 124	KURRI KURRI NSW
87	Mr	Zac	Sidiropoulos		No Address Given
88	Mr	BW & HN	Hayward	"Taneyah"	MOONBI NSW
89			Baiada Tamworth Chicken Growers		
90	Mr	BJ & MR	Frame	Frame Farms RMB 320	McKEE'S HILL Via LISMORE NSW
91			Sunnybrand Broiler Chicken Growers		
92			Trenches Solicitors	PO Box 570	LISMORE NSW
93	Mr	L & C	Howard	131 Newport Road	DORA CREEK NSW
94	Mr	Graham	Jones	RMB 270	SOMERSBY NSW
95	Mr	A K	Jones	RMB 270 Grants Road	SOMERSBY NSW
96	Mr	Brad	Carr	RMB 1535	PEATS RIDGE NSW
97	Mr	Charlie	Attard		No Address Given
98	Mr	N.M. & J I	Gilmore	"Romilly Park"	BINNA BURRA NSW
99	Mr	T	O'Brien	14 Myrtle Street	MINTO HEIGHTS NSW
100	Mr	M	Grima	141 South Creek Road	SHANES PARK NSW
101	Mr	A	Grima	141 South Creek Road	SHANES PARK NSW
102	Mr	R & K	Collins	RMB 2168	KULNURA
103	Mr	Frank	Grima	99 Third Road	BERKSHIRE PARK NSW
104	Mr	M	Britten		No Address Given
105	Mr	Robert	Frost	"Nuninjeeri"	SEAHAM NSW
106	Ms	Heather	Ranclaud	Ingham's Turkey Growers	WILLOW TREE NSW
107	Mr	Shaun	Rodger	No Address Given	
108	Ms	Robyn	Marjoribanks	29 Sawyers Gully Road	SAWYERS GULLY NSW
109	Mr	W	Marjoribanks	'RAW' Poultry Park	SAWYERS GULLY NSW
110	Mr	Garry	Marjoribanks	29 Sawyers Gully Road	SAWYERS GULLY NSW
111	Mr	N & M	Kirwan		No Address Given
112	Mr	George	Sidiropoulos		No Address Given
113	Mrs	Kim	Azzopardi	209 Euloo Road	PEATS RIDGE NSW
114	Mr	L	Babekuhl	RMB 2125	KULNURA NSW
115	Mr	Max	Britten	126 Keighley Avenue	SOMERSBY NSW
116	Mr	B L	Draper	RMB 2100	KULNURA NSW
117	Mr	P	Garland	27 Erin Street	STROUD NSW
118	Mr	J & V	Hart	85 Holden Road	KARUAH NSW
119	Mr	N & G	Holme	RMB 348	CENTRAL MANGROVE NSW
120	Mr	P & M	Kemp		No Address Given
121	Mr	Bruce	Lang		No Address Given
122	Mr	P & M	Luci		MANGROVE MOUNTAIN
123	Ms	Rosemary	Luongo	RMB 1835	MANGROVE MOUNTAIN NSW
124	Mr	Tony	Luongo	RMB 1835	MANGROVE MOUNTAIN NSW

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125	Mr	HJ & FM	O'Connor	15 Bundabah Street	KARUAH NSW
126	Mr	A & J	Richardson	PO Box 1	BUNGALOW NSW
127	Mr	Bill & Joy	Russell	PO Box 47	KOOTINGAL NSW
128	Mr	J	Stanford	Frederick Road	CANIABA NSW
129	Mr	Bob	Swinfield	Lot B	BUXTON NSW
130	Mr	E J	Trotter	125 Werriberri Road	ORANGEVILLE NSW
131	Mr	J & J	Vella	866 Castlereagh Road	CASTELREAGH NSW
132	Mr	Lorraine	Wilson	Wyuna Farms Pty Limited	KULNURA NSW
133	Mr	Rodger	Wilson	Wyuna Farms Pty Limited	KULNURA NSW
134	Mr	L	Collison	Horns Crossing Road	VACY NSW
135	Mr	Ted	Hebblewhite	Glenburnie	TAMWORTH NSW
136	Mr	J & T	Basha	112 Wiseman's Ferry Road	SOUTH MAROOTA NSW
137	Mr	Gerry	Bolla	Livestock Officer	GOSFORD NSW
139	Mrs	Anne	Ellicott	"Kalarna"	PATERSON NSW
140	Mr	Noel	Ridly	"Cornella"	via WEST WYALONG NSW
141	Mr	Robert	Harrison	Harrison International	VILLAWOOD NSW
142	Mr	John	Stanham		No Address Given
143		Joint	Inghams, Baiada,	Cordina & Red Lea Chickens	
144	Mr	John	Burgess	University of Newcastle	CALLAGHAN NSW
145	Mr	John	Balfour	PO Box 1	TAHMOOR NSW
146	Mr	Jim	Martin	317 Bensley Road	INGLEBURN NSW
147	Mr	Tim	Luckhurst	37 Holly Street	BOWRAL NSW
148	Mr	Tom	Geczy	Dept S&RD	SYDNEY NSW
149	Ms	Joanne	Sillince	Australian Chicken Growers	SYDNEY NSW
150	Ms	Joanne	Sillince	NSW Farmers Ass.	SYDNEY NSW
151	Mr	John	Stanham		No Address Given
152	Mr	J & M	Fenech	Goodrich Road	CECIL PARK NSW
153	Mr	AK	Slade		PEATS RIDGE NSW
154			GBAC/Voterlobby		TURRAMURRA NSW
155	Mr	John	Bonanno	Bringelly Road	ROSSMORE NSW
156	Mr	Santo	Sgro		

## **APPENDIX 3 : THE LEGISLATIVE FRAMEWORK FOR POULTRY MEAT GROWING IN OTHER JURISDICTIONS**

### **Introduction**

The Terms of Reference for the Review require the Review Group to consider feasible alternative means for achieving the objectives of the legislation, including non-legislative approaches. The Review Group is also required to take account of relevant regulatory schemes in other Australian jurisdictions, and any recent reforms or reform proposals, including those relating to Competition Policy in those jurisdictions.

### **Overview**

South Australia, Queensland, Western Australia and Victoria have to some degree, similar legislation to New South Wales regulating poultry meat production. Tasmania, the Australian Capital Territory and the Northern Territory have no equivalent legislation. In South Australia the legislation governing poultry meat production is proposed to be repealed. In Queensland and Western Australia the legislation has been recently reviewed and in Victoria the legislation is currently under review.

In the Northern Territory, Inghams operates the only abattoir which processes poultry meat and this is supplied with poultry from its own company farms. In the Australian Capital Territory, there is no large scale poultry meat production, only laying hens. The situation in Tasmania is unique in that, even though the industry is relatively small (it currently consist of approximately 10 growers), all growers have contracts with Inghams, the sole poultry meat processor in Tasmania. The industry in Tasmania is currently undergoing rationalisation due to Inghams increasing its requirements in relation to the minimum farm size, ie. bird capacity. Another recent development has been an application by Inghams to the ACCC for authorisation for it to undertake collective negotiating with its Tasmanian contract growers. The ACCC has subsequently approved this authorisation.

### **South Australia**

In 1994 Primary Industries South Australia released the *Review of the Poultry Meat Industry Act, White Paper*. This paper outlined the South Australian Government's intention to deregulate the chicken processing industry by repealing the *Poultry Meat Industry Act 1969* (PMIA).

The PMIA establishes the Poultry Meat Industry Committee (PMIC). The PMIC has advisory, problem resolving and production control responsibilities. Its specific functions are the approval of chicken growing farms and agreements (contracts) between growers and processors, resolving disputes between growers and processors and providing a Ministerial referral advisory service. Processors with no contract growers and growers who produce less than 10,000 chickens a year are not subject to the legislation.

The *Poultry Meat Industry Act 1969 Repeal Bill* was passed by the Lower House of the South Australian Parliament, however, because the Bill was delayed in the Upper House, it has not been repealed. Although the legislation has not been repealed the PMIC is not currently active.

With the announcement of the move towards deregulation, Inghams lodged an application with the ACCC seeking authorisation concerning possible breaches of section 45 of the *Trade Practices Act 1974*. The application relates to Inghams proposal that its contract chicken growers be allowed to collectively negotiate a standard five year growing agreement and code of practice with Inghams. The ACCC granted authorisation (expiring on 30 June 2002) because it was satisfied that the anti-competitive effects of the proposed arrangements were outweighed by the public benefits and that the arrangements facilitated the transition from a regulated industry to a deregulated scheme.

Steggles lodged a similar application with the ACCC in July 1997, seeking authorisation for its growers in South Australia to collectively negotiate contracts, arrangements or understandings concerning the rates and conditions for the raising of broiler chickens. The ACCC granted authorisation effective from 11 June 1998 for a period of four years.

### **Queensland**

The Queensland chicken meat industry is regulated by the *Chicken Meat Industry Committee Act 1976*. The Act provides for arrangements between processors and growers for the growing of meat chickens from day old chickens to marketable age for processing. The intention of the Act is to provide the industry with a mechanism for discussion and negotiation on the growing fee in an orderly manner while leaving the industry as unfettered as possible.

A National Competition Policy review of the Act has been completed and the legislative amendments to the Act resulting from the review commenced in October 1998. The new legislative arrangements authorise the collective negotiation of contracts at the individual processor negotiating group level.

### **Western Australia**

The chicken meat industry in Western Australia is regulated by the *Chicken Meat Industry Act (1977-82)*. The Act was introduced in order to countervail a perceived source of imbalance in market power between growers and processors.

In July 1996 the Minister for Primary Industry established a Review Committee to examine the Act. The Committee submitted a report to the Minister in November 1996. The report concluded that changes to the existing Act should not be substantial. This resulted in the Committee recommending that the Act be extended by regulation pending another report specifically designed to address National Competition Policy.

A National Competition Policy review of the Act commenced in 1997 and was finalised prior to the end of 1998, however, the Final Report has not yet been made publicly available.

### **Victoria**

The chicken meat industry in Victoria is regulated by the *Broiler Chicken Industry Act 1978*. The preamble to the Act states that it is:

*“An Act to establish the Victorian Broiler Industry Negotiation Committee and to improve stability in the broiler chicken industry, and for other purposes.”*

The objectives of the Negotiation Committee, as stated in the Act, are:

- *“to create an environment and develop processes that facilitate agreements between growers and processors;*
- *to determine prices and recommend terms and conditions that would apply under fair and competitive market conditions; and*
- *to ensure that exploitation of growers does not occur.”*

The Committee makes recommendations to the Minister with respect to the terms and conditions which should be included in contracts; determines disputes between growers and processors; and determines the price which is to be the standard price for broiler chickens to be paid by processors to growers. The legislation provides for a variation in the standard growing fee provided the proposed variations are approved by the Committee.

A National Competition Policy review of the Act is currently underway. The review is being conducted by KPMG Consulting, an independent consulting firm engaged by the Victorian Department of Natural Resources and Environment.

#### **APPENDIX 4: BRIEF OVERVIEW OF SECTION 51AC OF THE TRADE PRACTICES ACT 1974**

From July 1 1998, Section 51AC of the *Trade Practices Act 1974* prohibits unconscionable conduct by a corporation (other than a listed public company) in supplying or buying goods or services. The goods or services must cost less than one million dollars and must be purchased or supplied for the purpose of trade or commerce. Transactions most likely to be affected are those involving standard leases, especially shopping centre leases, franchise agreements and standard form contracts relating to the supply or purchase of goods or services.

This is an extension of another Section of the Act which already prohibits a corporation from engaging in unconscionable conduct in dealings with consumers. Also common law has always provided a remedy for unconscionable conduct. However, in both of these cases, the weaker party must prove that the stronger party knew of and has taken advantage of a 'special disability' (such as illiteracy or illness) of the weaker party.

Section 51AC does not require proof of special disability. Instead, the legislation lists 11 matters which the courts may have regard to when deciding whether the conduct was unconscionable.

These matters include:

- the relative strength of the bargaining positions of the parties;
- whether the parties acted in good faith;
- whether the big business was willing to negotiate the terms and conditions of the contract;
- whether the small business understood the documents;
- whether the big business exerted any undue influence or pressure or used unfair tactics;
- the amount for which, and the circumstances under which, the small business could have acquired identical or equivalent goods or services;
- whether the big business imposed conditions that were not reasonably necessary to protect its legitimate interests;
- whether the conduct of the big business was similar to its conduct in similar transactions with similar businesses;
- whether the big business unreasonably failed to disclose to the small business: any intended conduct of the big business that might affect the interests of the small business; and any risks to the small business arising from the intended conduct of the big business (that would not be apparent to the small business);
- the requirements of any applicable industry codes; and
- the requirements of any other industry code, if the small business acted on the reasonable belief that the big business would comply with that code.

If a small business successfully argues that Section 51AC has been breached, the court can order a range of remedies. It can declare the contract to be unenforceable, freeing the small business from any contractual obligations; or it can vary the contract (that is, impose its own conditions into the contract); or it can order the offending company to pay damages to the small business.

**APPENDIX 5: DERIVATION OF THE JANUARY 1999 REARING FEE MODEL**

		Cents/Chicken
Interest		10.60%
Cullen Egan & Dell (CE&D)- Movement	1.5%	
CPI - 12 months previous	119.8	
CPI - 6 months previous	120.7	
CPI - Current	121.9	
Farm Size sq ft	42,000	
Density		
Mortality		
Live Birds		
B/Rate		
Production - Birds	302,032	
Land	180,000	(no change)
Site Works/Road	42,131	(no change)
Shedding/Equipment	316,935	(no change)
Insulation	36,637	(no change)
	395,703	(no change)
Equipment	153,187	(no change)
	548,890	(no change)
Total Asset Replacement Values	728,890	(no change)
Assessed Market Value (85%)	619,557	(no change)
Rate Return on Assessed Market Value		
Lease Return	7.00%	(no change)
Total Return on Investment	43,369	(14.36)(no change)
<u>Fixed Costs</u>		
Labour	44,138	(14.61)(CE&D))
Insurance	3,259	(1.08)(no change)
Rates	1,137	(0.38)(no change)
Water	2,676	(0.89)(no change)
Vehicle	5,672	(1.88)(no change)
Administration	1,759	(0.58)(no change)
Working Capital	997	(0.33)(interest rate applied)
	59,638	(19.75)
<u>Batch Costs</u>		
R & M	12,005	(3.97)(5 month CPI inc. 0.99)
Electricity	7,362	(2.44)(5 month CPI inc. 0.99)
Litter	8,044	(2.66)(actual cost)

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Brooding Gas	10,096	(3.34)(actual cost)
Previous Period Gas Adjustment	220	(0.07)(actual cost)
Relief Labour	6,142	(2.03)(CE&D)
Other	2,881	(0.95)(6 month CPI inc. 0.99)
	46,750	(15.48)
 Total Grower Costs	 \$149,757	 (49.58)

**APPENDIX 6: GAZETTED GROWING FEES - JANUARY 1993 TO JANUARY 1999**

<b>Date</b>	<b>Model Fee</b>
January 1993	45.98
July 1993	46.78
January 1994	46.78
July 1994	45.00
January 1995	45.14
July 1995	46.15
January 1996	46.38
July 1996	47.87
January 1997	48.94
July 1997	48.64
January 1998	49.04
January 1999	49.58

**Baiada Poultry Limited - Sydney Division**

<b>Date</b>	<b>Negotiated Growing Fee</b>	<b>Throughput Discount</b>	<b>Net Fee</b>
January 1993	44.24	1.14	43.1
July 1993	45.00	0.86	44.14
January 1994	45.00	1.46	43.54
July 1994	45.00	1.46	43.54
January 1995	45.03	1.46	43.57
July 1995	44.40	0	44.40
January 1996	44.06	0	44.06
July 1996	45.48	0	45.48
January 1997	46.49	0	46.49
July 1997	46.21	1.61	44.60
January 1998	46.59	1.61	44.98
January 1999	47.10	0.64	46.46

**Baiada Poultry Pty Limited - Tamworth Division**

<b>Date</b>	<b>Negotiated Growing Fee</b>	<b>Throughput Discount</b>	<b>Net Fee</b>
January 1993	43.68	4.16	39.52
July 1993	44.44	3.90	40.54
January 1994	44.44	3.99	40.45
July 1994	44.44	3.99	40.45
January 1995	42.88	0.51	42.37
July 1995	43.84	2.50	41.34
January 1996	44.06	1.19	42.87
July 1996	45.48	1.90	43.58
January 1997	46.49	2.30	44.19
July 1997	46.49	0	46.49
January 1998	46.59	0	46.59
January 1999	47.10	0.66	46.44

**Steggles Limited (formerly Australian Poultry Limited) - Hunter**

Date	Negotiated Growing Fee	Throughput Discount	Net Fee
January 1993	45.68	0	45.68
July 1993	46.48	0	46.48
January 1994	46.48	0	46.48
July 1994	46.48	0	46.48
January 1995	46.51	0	46.51
July 1995	46.72	0	46.72
January 1996	46.72	0	46.72
July 1996	47.87	0	47.87
January 1997	48.94	0	48.94
July 1997	48.64	0	48.64
January 1998	49.04	0	49.04
January 1999	49.58	0.37	49.21

**Australian Poultry Limited - Sydney**

Date	Negotiated Growing Fee (cents per bird)
January 1993	64.59 based on a ten week growing cycle and stocking density of 10.4 birds per sq. metre.
July 1993	65.72 based on a ten week growing cycle and stocking density of 10.4 birds per sq. metre

**Inghams Enterprises Pty Ltd**

Date	Negotiated Growing Fee	Throughput Discount	Net Fee
January 1995	45.08	0.48	44.60*
July 1995	45.29	0.48	44.81*
January 1996	45.29	0.48	44.81*
July 1996	46.14	0	46.14
January 1997	47.21	0	47.21*
July 1997	47.21	0	47.21*
January 1998	47.31	0	47.31
January 1999	47.85	0	Special conditions include additional 56 cents per square metre for single batch litter/cleanout.

\*Special conditions - an additional 3 cents per bird for single batch litter/cleanout.

**Inghams Enterprises Pty Ltd - Northern Divisions**

Date	Negotiated Growing Fee	Throughput Discount	Net Fee
January 1993	44.30	0.50	43.80*
July 1993	45.05	0.61	44.44*
January 1994	45.05	0.38	44.67*
July 1994	45.05	0.38	44.67*

\*Special conditions - an additional 3 cents per bird for single batch litter/cleanout.

**Inghams Enterprises Pty Ltd - Southern Division**

Date	Negotiated Growing Fee	Throughput Discount	Net Fee
January 1993	44.30	0.15	44.14*
July 1993	45.05	0.95	44.10*
January 1994	45.05	0.88	44.17*
July 1994	45.05	0.88	44.17*

\*Special conditions - an additional 3 cents per bird for single batch litter/cleanout.

**Cordina Chicken Farms Pty Ltd**

Date	Negotiated Growing Fee	Throughput Discount	Net Fee
January 1993	43.68	0.27	43.41
July 1993	44.44	0.96	43.48
January 1994	44.44	1.62	42.82
July 1994	44.44	1.62	42.82
January 1995	44.47	1.62	42.85
July 1995	43.84	0	43.84
January 1996	44.06	0	44.06
July 1996	45.48	0	45.48
January 1997	46.49	0	46.49
July 1997	46.21	0.88	45.33
January 1998	46.59	1.285	45.305
January 1999	47.10	0.52	46.58

**Red Lea Chicken Pty Ltd**

Date	Negotiated Growing Fee	Throughput Discount	Net Fee
January 1993	43.68	1.41	42.27
July 1993	44.44	0.64	43.80
January 1994	44.44	0	44.44
July 1994	44.44	0	44.44
January 1995	44.47	0	44.47
July 1995	44.68	0	44.68
January 1996	44.68	0	44.68
July 1996	45.48	0	45.48
January 1997	46.49	0	46.49
July 1997	46.49	0	46.49

January 1998	46.59	0	46.59
January 1999	47.10	0	47.10

**Jancart Pty Ltd**

Date	Negotiated Growing Fee	Throughput Discount	Net Fee
January 1993			
July 1993	44.44	0	44.44
January 1994	44.44	0	44.44
July 1994	44.44	0	44.44
January 1995	44.47	0	44.47
July 1995	44.68	0	44.68
January 1996	44.68	0	44.68
July 1996	45.48	0	45.48
January 1997	46.49	0	46.49
July 1997	46.21	0	46.21
January 1998	46.59	0	46.59
January 1999	47.10	0	47.10

**Sunnybrand Chicken Pty Ltd**

Date	Negotiated Growing Fee	Throughput Discount	Net Fee
January 1993	43.77	2.79	40.98
July 1993	44.58	3.60	40.98
January 1994	44.52	3.54	40.98
July 1994	44.52	3.54	40.98
January 1995	44.55	3.54	41.01
July 1995	44.76	3.54	41.22
January 1996	46.38	5.80	40.58
July 1996	47.87	6.67	41.20
January 1997	48.94	5.96	42.98
July 1997	48.64	conventional shedding - 3.63 tunnel-ventilated shedding - 8.42	conventional shedding - 45.01 tunnel-ventilated shedding - 40.22
January 1998	49.04	conventional shedding - 4.59 tunnel-ventilated shedding - 8.71	conventional shedding - 44.45 tunnel-ventilated shedding - 43.83 (40.33+3.5)
January 1999	49.58	conventional shedding - 6.09 tunnel-ventilated shedding - 9.33	conventional shedding - 43.49 tunnel-ventilated shedding - 43.75 (40.25+3.50).

**Narex Australia Pty Limited**

<b>Date</b>	<b>Negotiated Growing Fee</b>	<b>Throughput Discount</b>	<b>Net Fee</b>
July 1994	45.05	0	45.05
January 1995	45.08	0	45.08
July 1995	45.29	0	45.29
January 1996	45.29	0	45.29
July 1996	46.50	0	46.50
January 1997	47.57	0	47.57
July 1997	47.57	0	47.57
January 1998	47.57	0	47.57
January 1999	47.85	0	47.85

**A A Tegal Pty Ltd - negotiated fee structure for turkey growing**

<b>Date</b>	<b>Net Price (\$) Per Square Metre Per Annum</b>	<b>Brooding Allowance (\$) Per 100 sq. Metres Per Batch</b>
January 1993	30.68	80.09
July 1993	31.22	80.46
January 1994	31.22	80.46
July 1994	31.22	80.46
January 1995	31.22	80.46

**Inghams Enterprises Pty Limited - negotiated growing fee structure for turkey growing**

<b>Date</b>	<b>Net Price (\$) Per Square Metre Per Annum</b>	<b>Brooding Allowance (\$) Per 100 sq. Metres Per Batch</b>
July 1995	31.22	80.46
January 1996	31.22	80.46
July 1996	31.86	82.35
January 1997	31.86	108.07