

**DISPUTES**

The PMIC does not have statutory powers to settle disputes but does so by negotiation and conciliation. In practice parties accept the decision of the PMIC possibly because it is too difficult to take it any further.

Because of the composition of the PMIC, determinations are generally compromises between two positions rather than market outcomes. Determinations are effectively decided by the Chairman and Independents. Some disputes may drag on for months acting as a disincentive to try and effect any changes to contracts or to the status quo. Determinations, which may apply to a particular processor and set of growers or to processors and growers in general do form precedents and may be difficult to change even if the market circumstances under which they were set are no longer relevant.

The PMIC operates in such a transparent manner that all processors and growers (at least through their representatives) know the fees, contract terms and dispute details of their competitors. This acts to inhibit initiatives which may be forthcoming because competitors are immediately made aware of them. Innovation is impeded and individual arrangements or incentives to improve efficiency, which could be beneficial to particular Growers are constrained or prevented.

Under the dispute settling arrangements, competitors are sitting in judgement on the business affairs and grievances of other competitors posing at least a moral dilemma if not a definite commercial conflict of interest.

## LIKELY CONSEQUENCES OF NON APPROVAL

### Short run

In the short run non approval of interim Authorization will lead to a difficult situation because it is becoming generally known that the outcomes of the activities under current NSW legislation are in conflict with the TPA. Legal advice from Freehills has been received by the Processors that individual processors and growers in complying with the requirements of the PMIC are at risk of contravening the TPA. In view of this opinion, neither processors nor growers can afford to risk incurring the penalties associated with contravening the TPA. As a consequence the current fee setting and contract determining processes cannot continue.

The industry will be left in a situation with a conflict between State and Commonwealth legislation. Legal advice further states that in such a situation, Commonwealth legislation prevails. An immediate move to a fully deregulated negotiating regime may invoke considerable adjustment costs to individual growers and processors. A move to immediate deregulation though is politically unlikely because some parties are in denial about the need to change and the emotion of the perceived imbalance of bargaining power will be played to the hilt.

Authorization under the terms proposed in this Application directly addresses that political issue and provides a satisfactory path forward. Some time is required to allow adjustments to occur, however the adjustments themselves must start. Non-approval of interim Authorization will provide comfort to those who are not willing or prepared to countenance any change.

### Longer term

The current arrangements which are in violation of the TPA must be changed. The consequences of non approval though will depend on what assumptions are made as to what conditions will prevail in the changed state.

The Review is currently still with the Minister. Growers are lobbying hard to maintain the status quo (irrespective of its conflict with the TPA). Authorization will directly address a major concern namely a perceived imbalance in bargaining power. This should provide the Minister with confidence to act.

A failure to grant Authorization may cause the Minister to adopt a legislative path which continues to impose current or very similar restrictions on the Industry. This would inhibit the freedom to develop contractual arrangements which

- reflect the conditions facing the various Processors,
- permit adjustment of resources to changed economic conditions
- permit growth and
- allow increase competition between Processors

resulting in suboptimal outcomes and growth paths.

It is very difficult to determine what these costs may be without better specifying the future state.

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### Adverse consequences

The adverse consequences set out below from disallowing Authorization arise from taking the deregulated situation as the counterfactual position rather than assuming some altered regulated position. It is argued that if growers are not able to negotiate collectively a number of undesirable social and economical consequences will arise at least in the short run.

These are:

- A perceived imbalance of bargaining power which at least imposes psychic costs on growers.
- Individual growers will be faced with costs of search, information gathering, negotiations (possibly high cost accountants/legal persons)
- These costs will involve monetary outlays, time and psychic costs (relating to concerns and worries about the process or pressures from financiers).
- Some growers may not fully understand the true costs of their operations and agree to sub optimal contracts which lead to problems (personal financial, health, safety or environmental) later.
- There may also be costs associated with dissatisfaction of individual outcomes relative to others in similar positions.
- Processors will be faced with costs of negotiating individually with growers.
- These costs will involve monetary outlays, time, (which could involve considerable opportunity costs due to owners/management time being taken up in negotiations rather than on improving and managing the rest of the business) as well as psychic costs.
- An increase in industrial action (withholding strikes) which may occur over fees or negotiations. The consequences of industrial action would be severe because of the nature of the operations with the flow of chicks from hatcheries irreversible in the intermediate run. It would have both adverse financial and animal welfare impacts.
- An increase in disputes because of a lack of a clear resolution process or lack of consistency in contracts of Growers in similar situations.
- The Industry may be constrained in meeting the various planning and environmental challenges to which it is increasingly subject, resulting in a higher than necessary cost to the community.
- There may be lower efficiencies in operations due to an inability to ensure standardization of business practices.

## PUBLIC BENEFITS

*The public benefits are the avoidance of the adverse consequences noted above plus outcomes from the ability to better tailor contracts to the circumstances facing particular Processors and their Growers.*

These outcomes will improve the position of both the processor and growers compared to the 'one shoe fits all' existing approach. In addition because individual contracts may now be negotiated which are acceptable to both parties further improved outcomes could be expected.

These benefits include:

- An improved bargaining position of growers to counter the perception of a power imbalance with processors. (While a change in bargaining power itself may not constitute a public benefit, perception of power imbalance appears to be a major rationale for the current restrictive legislation, therefore addressing this issue removes the need for a legislative solution which in turn opens up a flow-on of public benefits.)
- Reduced transactional costs for growers associated with seeking information, preparing negotiating positions and undertaking negotiations.
- Reduced transactional costs for processors in negotiations.
- A reduction in sources of conflict which could give rise to industrial unrest.
- A mechanism for dealing with disputes which leads to greater industrial harmony and hence to a focus on productivity.
- A more rapid adjustment to safety, environmental, planning and other issues impacting on the Industry and hence increased community benefits.
  - The processor by processor contracts will enable specific attention relating to particular locations to be taken on such issues.
  - Processors do not own the sheds and they have no power to ensure growers adjust or rectify any Occupational Health & Safety issues apart from either reporting them to the appropriate authority or refusing to send in teams to pick up birds (both very strong actions, particularly refusal to send in teams because the birds are owned by the Processor).
  - The opportunity to include pre-emptive arrangements and codes, such as ISO, and quality codes which are not mandated by law or regulation, but which are highly desirable or which a processor may want to include to differentiate itself from its competitors will be enhanced.
  - The public benefits arise from being able to effect these changes which are inhibited or frustrated by the current system.
  - Being able to do it on a Processor by Processor basis or on a regional basis (within a processing group) involves less administrative costs than individually negotiating these arrangements.
- Being able to more easily effect differential contracts with a group of growers will allow each Processor (supply chain) to differentiate itself from another Processor (supply chain) and increase competition.
- Increased consumer satisfaction due to an increased ability to adjust production to meet the needs of consumers.

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- Each processor will be able to specify the needs of their buyers (consumers) more clearly in contracts and produce chickens meeting those requirements.
- An increase in productivity because of a more efficient matching and pricing of processor and grower capabilities
- Improved incentives for capable growers.
- A stronger New South Wales Industry (and hence employment in regional areas) which is better equipped to withstand interstate competition, competition from overseas imports (which is likely) and competition from other products.
- A more rapid growth rate.

Benefits are expected to flow through to the consumer because of the competitive nature of the Industry as identified in various NCP Reviews.

### **DETRIMENTAL EFFECTS**

The major detrimental effects are:

- a collectively negotiated contract by growers could be expected to achieve a higher fee outcome and
- possibly less flexible contracts than individually negotiated contracts.

It is suggested however, that the ability to negotiate on a processor by processor basis, with grower groups and with individuals if they elect to do so is a distinct advantage over the current Industry wide arrangement.

It is further argued that the benefits identified in the Public Benefits Section more than overcome any remaining inefficiencies and that there are real, tangible benefits to growers, other suppliers of inputs, processors, consumers and to the community as a whole.

**APPENDICES**

**MINISTERIAL ADVISORY COMMITTEE**

The Committee may be established at the discretion of the Minister for Agriculture for a suggested 3 years. It is suggested that the following apply:

The Minister for Agriculture will appoint a Poultry Advisory Committee (PAC) consisting of one representative each from the Growers, Processors, Government and an Independent Person. The Committee is to be funded by Industry.

Nominations will be supplied to the Minister from:

- NSW Farmers' Contract Poultry Group Association, for Grower representative,
- Processors for Processor representative and
- NSW Agriculture for Government and Independent representatives.

The purpose of the Committee is to keep the Minister fully informed of the progress of ACCC Authorization and of its implementation and operation for 3 years.

- The Committee will be responsible for ensuring that PNGs are or have been established in accordance with the Code of Practice which forms part of this Authorization.
- The Committee will report monthly until PNGs are established among all processors and thereafter quarterly.
- The Committee is to maintain a list of suitable persons or organizations from whom mediators may be drawn
- The Committee, through its Chair has the right to report on matters at any time to the Minister.

**NSW CODE OF PRACTICE**

**FOR THE CONDUCT OF  
NEGOTIATIONS BETWEEN A POULTRY PROCESSOR AND  
ITS CONTRACTED GROWERS**

**PREAMBLE**

Under this Code, a poultry grower contracted to a processor may choose to negotiate as an individual with the processor on all matters associated with their contractual relationship, or to join with other growers contracted to that processor in order to negotiate collectively. Those growers who choose to act collectively are defined as Participating Growers (PGs) and will appoint from among their number, Grower Representatives to be members of a Processor Negotiating Group (PNG) along with representatives of the processor.

The Code defines the conditions applying to the formation of a PNG, and the functions, composition, and procedures of the PNG. Those growers who choose to negotiate as individuals are termed Non-Participating Growers (NPGs). The Code also describes the rights and restrictions that apply to NPGs. In the Code, the terms "he", "him" and "his" are used to mean "he or she", "him or her" and "his or her" respectively. There is a list of definitions at the end of the Code.

**CLAUSES**

**1 Functions of a PNG**

- 1.1 To negotiate the terms and conditions of the Growing Contract between all PGs and the processor, and any associated matters.
- 1.2 To negotiate the growing fees to be paid to PGs, and the procedures for the regular review of fees.
- 1.3 To negotiate changes to operational procedures desired by either the PGs or the processor and, where appropriate, to negotiate financial considerations for such changes.
- 1.4 To act as a mediating or negotiating body for the resolution of disputes between the processor and all PGs, or any individual PG.
- 1.5 To place before meetings of PGs for their final determination the outcome of negotiations conducted under Clauses 1.1 to 1.4, and any recommendations arising from those negotiations that relate to PGs collectively, and to notify an individual PG of any recommendation relating to him alone.
- 1.6 To convene and conduct meetings of PGs, when these are required to further the purposes of the PNG.

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- 1.7 To administer voting procedures associated with the PNG and its activities.
- 1.8 To keep proper records of its meetings and resolutions.

### **2 Formation of a PNG**

- 2.1 A secret ballot must be held at the request of any Grower contracted to a Processor of all growers contracted to that Processor as soon as practicable to determine if they wish to negotiate collectively.
- 2.2 All Growers contracted to the Processor are to be given 14 days notice in writing of the ballot, however it is not a condition that all Growers vote.
- 2.3 Growers are free to meet on their own and with advisors in accordance with Section 9 prior to the ballot being held.
- 2.4 The Processor is to play no part or exert any influence over any vote taken under clause 2 except as provided under clause 2.7.
- 2.5 The Processor is free to attend the meeting at which the ballot is being held and to address the meeting if requested by a Grower.
- 2.6 A PNG will be formed if 40 (forty) per cent of contracted Growers vote to negotiate collectively.
- 2.7 With the agreement of the Processor, a PNG may be formed if the vote is less than 40 (forty) per cent or more than one PNG may also be formed.
- 2.8 All contracted Growers are eligible to be a Participating Grower in a PNG.
- 2.9 Once a vote under clause 2 is held growers are free to form any PNGs they wish.
- 2.10 If a group of Growers forms a PNG independent of the remainder of the Grower group, they are under no obligation to accept other growers into this PNG.
- 2.11 A Grower may request and join an existing PNG providing that a majority of existing Growers represented by the PNG agree. The Processor is to play no role in any decision by existing Growers represented by a PNG to allow new members to join.
- 2.12 Where a contract has already been signed between a Processor and a PG represented by the PNG, the Processor is under no obligation to offer the same contract to new members who join that PNG. New members however will be included in any new contracts or extensions of contracts previously signed with PGs in that PNG.



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- 2.13 If a PNG is not formed then all negotiations will be on a one on one basis.
- 2.14 If the number of Participating Growers falls below the agreed percentage in 2.6 then all PNGs will lapse unless it is mutually agreed to continue.
- 2.15 A PNG must be reformed if a ballot of all Growers contracted to that Processor achieves the percentage agreed in Clause 2.6.

### **3 Composition of the PNG**

- 3.1 The number of Grower Representatives in the PNG that are to be formed, will be determined by the PGs in consultation with the processor having regard to the size of the group, but shall not normally be less than two (2) or more than four (4).
- 3.2 The number and selection of Processor Representatives will be determined by the processor but shall not exceed the number of Grower Representatives in the PNG.

### **4 Election of Grower Representatives**

- 4.1 Grower Representatives must themselves be PGs. The term of appointment of Grower Representatives shall normally not be less than one (1) year or more than three (3) years. Retiring Grower Representatives are eligible for re-election.
- 4.2 Grower Representatives shall be elected by all PGs. The ballot shall be conducted by show of hands, or by secret ballot if requested by any PG, and at a time to enable new representatives to take up their positions at the expiry of the term of retiring representatives.
- 4.3 The ballot shall be convened and conducted by the PNG, or by an independent body or individual appointed by the PNG, at a meeting notified to all PGs in writing and convened for the purpose. If the PNG is not already constituted, the ballot shall be convened and conducted by the PGs in the proposed PNG.
- 4.4 All PGs contracted to the processor at the time of the election shall be eligible both to be nominated as representatives and to participate in the ballot.
- 4.5 PGs who will not be attending the meeting may nominate in writing, on a form approved by the authority conducting the ballot, another PG to vote on their behalf at the meeting.
- 4.6 Each PG may vote for as many candidates on the ballot paper as there are Grower Representative vacancies to be

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filled. The candidates with the highest numbers of votes shall be declared elected to each vacancy until all vacancies are filled. Any tie for the final place shall be resolved by drawing lots.

- 4.7 A casual vacancy among Grower Representatives will be filled by appointment of the available candidate with the highest number of votes at the last election who remained after all vacancies had been filled or, in the absence of such a candidate, by election in accordance with clauses 4.2 to 4.5. A representative so appointed or elected shall serve until the next general election for Grower Representatives but will be eligible for re-election.

### **5 Meetings of the PNG**

- 5.1 Meetings of the PNG shall be held if requested either by the processor or by at least half of the Grower Representatives.
- 5.2 Two-thirds of the Grower Representatives and one Processor Representative shall constitute a quorum.
- 5.3 Matters that are able to be determined by the PNG shall be resolved in the affirmative only if the Processor Representatives present, and at least two-thirds of the Grower Representatives present, vote in favour.
- 5.4 In carrying out any of its functions, the PNG:
  - 5.4.1 may take such action and obtain such information as it resolves is necessary for that function;
  - 5.4.2 may, at the request of either Grower or Processor Representatives, resolve to invite a suitably qualified person to a meeting to advise it on any matter.
- 5.5 Costs incurred in carrying out the above functions will be met equally by PGs and the processor, unless otherwise agreed.
- 5.6 PGs may appoint at their own cost advisers (subject to clause 5.7) to assist them in preparations and ongoing negotiation matters. Such advisers may at the express wish of growers, negotiate directly with the processor contract terms and conditions on behalf of the growers they represent.
- 5.7 A common advisor is not to be used across the Industry nor is it envisaged that a common adviser would be used across PNGs with a single Processor (Growers should form the one PNG if they want a common adviser).
- 5.8 Only Grower Representatives and Processor Representatives may vote at PNG meetings.

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- 5.9 Grower Representatives or Processor Representatives shall be granted a temporary adjournment of a PNG meeting in order to obtain specialist advice not readily available to them at the meeting, on a matter before the meeting.

### **6 Recommendations of the PNG on a matter for decision by all Participating Growers**

- 6.1 Any recommendation shall be notified to all PGs in advance of a meeting of PGs convened for the purpose of determining the matter. The processor may attend the meeting.
- 6.2 The recommendation shall be determined by a two-thirds majority of all PGs voting at the meeting, by show of hands or by secret ballot if requested by any PG or the processor. The resulting resolution shall be binding on all PGs.
- 6.3 PGs who will not be attending the meeting may nominate in writing, on a form approved by the PNG, another PG to vote on their behalf at the meeting.
- 6.4 If the recommendation is not approved as in 6.2 above, the meeting shall determine by a simple majority, on a show of hands or by secret ballot if requested by any PG or the processor, whether the matter shall be referred back to the PNG for further negotiation or be determined in accordance with the dispute resolution provisions of the Growing Contract.

### **7 Recommendations of the PNG on a matter for decision by an individual Participating Grower**

- 7.1 The recommendation of the PNG shall be notified to the individual PG in writing.
- 7.2 The PG shall, within fourteen (14) days, notify the PNG in writing whether he accepts its recommendation or wishes to resolve the matter in accordance with the dispute resolution provisions of the Growing Contract.

**8 Matters Not Resolved within the PNG for decision by all Participating Growers**

- 8.1 The matter shall be notified to all PGs in advance of a meeting of PGs and the processor convened for the purpose of determining the matter.
- 8.2 The Processor and Grower Representatives on the PNG shall outline their positions on the issue in dispute. The matter will then be considered by the meeting.
- 8.3 A final recommendation to resolve the matter, which must have the support of the processor, may be put to a vote by the PGs by show of hands or by secret ballot if requested by any PG or the processor.
- 8.4 PGs who will not be attending the meeting may nominate in writing, on a form approved by the PNG, another PG to vote on their behalf at the meeting.
- 8.5 If the recommendation is approved by at least two-thirds of the PGs voting, the recommendation shall be binding on all PGs.
- 8.6 If the processor does not support the recommendation, or the recommendation is not approved as in 8.5 above, and all other avenues for resolution of the matter have been exhausted, the issue shall be determined in accordance with the dispute resolution provisions of the Growing Contract.

**9 Meetings of Growers**

- 9.1 PNG Grower Representatives may meet at any time on their own or with other PGs within the PNG or with advisers to discuss any matter concerning the PG group.

**10 Participating and Non-Participating Growers**

- 10.1 An individual PG is bound to enter into a Growing Contract negotiated through the PNG but he may discuss with the processor at any time the terms and conditions of his Growing Contract or any matter arising from it.
- 10.2 A NPG will not participate in the negotiation of Growing Contracts or growing fee arrangements through the PNG, but will negotiate separately and directly with the processor on all matters.
- 10.3 A NPG may negotiate directly with the Processor on any matter.
- 10.4 A NPG will not be eligible to participate in ballots for the election of Grower Representatives to the PNG nor to attend meetings convened by the PNG.
- 10.5 Any growers contracted to a processor may meet at any time to discuss matters not connected directly with the negotiation of Growing Contracts.

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- 10.6 All growers will have access to the any body established by the Minister of Agriculture to advise on operations of the Authorization.
- 10.7 At the formation of a PNG or at the time the collective agreement with a PNG is due for renegotiation, a Grower may elect to opt out and become a Non Participating Grower (NPG).
- 10.8 A Grower may at other times, with the Processor's agreement, withdraw from the collectively negotiated contract by advising the PNG in writing.

## **DEFINITIONS**

### **PROCESSOR NEGOTIATING GROUP (PNG)**

A body comprised of Processor Representatives and Grower Representatives to undertake the Functions in Clause 1.

### **PROCESSOR REPRESENTATIVE**

A person selected by the processor to represent it on the PNG

### **GROWER REPRESENTATIVE**

A PG elected by all PGs within a PNG or prospective PNG contracted to the processor to represent them on the PNG.

### **PARTICIPATING GROWER (PG)**

A grower contracted to the processor who has chosen to negotiate with the processor collectively with other growers and be represented on the PNG. A grower who has not notified the processor that he has chosen to be a NPG is deemed to be a PG.

### **NON-PARTICIPATING GROWER (NPG)**

A grower contracted to the processor who has chosen to negotiate with the processor directly and independently of other growers, and has notified the processor of this in writing.

## **FRACTIONS**

Where reference is made to a proportion or percentage of Grower Representatives or PGs, these fractions shall be calculated to the nearest whole number.

## NSW MINIMUM CONTRACT GUIDELINES

All contracts between a processor and a Participating Grower negotiated through a Processor Negotiating Group will need to consider at least the following matters:

### 1 ADMINISTRATION - CONTRACTS

- 1.1 The Code of Practice for Conduct of Negotiations between a Poultry Processor and its Contracted Growers.
- 1.2 Terms and expressions used in the document.
- 1.3 Provisions for commencement, expiry and renegotiation of the contract, including:
  - 1.3.1 a specific commencement date, an expiry date and a minimum contract period of five years, or as otherwise agreed by the parties;
  - 1.3.2 a right of either party, not less than 12 months before the expiry date, to notify the other party that it wishes to enter into negotiations for a new agreement;
  - 1.3.3 an obligation on the other party to respond stating its own intentions in relation to entering into negotiations for a new contract and the proposed date of commencement of negotiations, not less than 6 months before the expiry date and with negotiations to begin within 1 month;
  - 1.3.4 no obligation on either party to enter into a new agreement unless the parties state their intentions in writing;
  - 1.3.5 a requirement to negotiate in good faith;
  - 1.3.6 any arrangements for the use of agents in negotiations.
- 1.4 Arrangements for:
  - 1.4.1 variations of the contract by mutual agreement of the parties;
  - 1.4.2 suspension of operation of the contract due to *force majeure*;
  - 1.4.3 termination of the contract:
    - by mutual agreement of the parties;
    - if either party is in breach and the breach is not remedied in a reasonable time;
    - if either party is negligent in performance of its obligations;
    - if either party proposes to cease business in the poultry meat industry.
  - 1.4.4 reasonable specified default provisions:
    - for example, if either party is declared bankrupt or is placed in receivership.
- 1.5 Rights and obligations of partnerships and trusts.

**2 ADMINISTRATION – GENERAL**

There should be provisions for:

- 2.1 **equal treatment** of all Participating Growers in a PNG by the processor, as far as is reasonably practicable, in the supply of birds and materials of equivalent standards - commensurate with specified grouping criteria or facilities;
- 2.2 giving **prior notice** of all deliveries and collections;
- 2.3 **specifying the form of notice** and the method of delivery to a specified location, where the contract requires one party to supply goods or services to the other;
- 2.4 **confirmation of the contractual relationship** between the individual grower and the processor;
- 2.5 **rights of assignment**, including:
  - 2.5.1 the right of the PG to assign his rights, privileges, duties and obligations under the contract to another grower, provided the processor gives prior written consent. This consent should not be unreasonably withheld. The processor may ask the proposed assignee to make improvements to the property to meet the Farm Facility Standards of the processor before giving consent to the assignment.
  - 2.5.2 the right of the processor to assign his rights, privileges, duties and obligations under the contract to another processor. If this occurs, the assignee processor should not require the PG, during the current contract period, to make any improvements to his property beyond the Farm Facility Standards of the assignor processor, unless otherwise agreed by the PNG of the assignor processor.
  - 2.5.3 providing that an assignee grower will not be disadvantaged by any penalty or classification incurred by the assignor.

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### **2.6 Dispute resolution procedures**

Unless otherwise agreed by the parties, the dispute resolution procedures will include the following provisions:

- 2.6.1 following notice of the matter from the aggrieved party to the other party, a requirement to endeavor to resolve the dispute by negotiation, including conciliation by the PNG;
- 2.6.2 if the dispute is not resolved by this means within 90 days, a requirement to attempt settlement using mediation through an external mediator agreed to by the parties or suggested by the PAC or similar body;
- 2.6.3 in the case of an amount payable (see clause) 4.1, if the matter has not been resolved within 28 days of the appointment of the mediator, or some other agreed time, a requirement to submit the dispute to external arbitration by a person agreed to by both parties who has not acted as the external mediator in the matter currently in dispute, but failing agreement, arbitration is to be through the Australain Commercial Disputes Centre (ACDC);
- 2.6.4 In all other disputes if the matter has not been resolved within 28 days of the appointment of the mediator or some other agreed time, the matter if mutually agreed may be referred to external arbitration;
- 2.6.5 the apportionment between the parties of costs incurred in mediation and or arbitration to be determined by the mediator and/or arbitrator.

### **3 GOODS, FACILITIES, SERVICES AND OTHER RESPONSIBILITIES**

There should be provisions defining:

- 3.1 the obligations of the grower and the processor in the supply of goods, facilities, services and veterinary advice including but not limited to birds, feed, medication, service advice, transport, litter, land, shedding and equipment, water, labor, records, management, biosecurity, shed preparation and catching;
- 3.2 responsibility for the costs of goods, facilities and services;
- 3.3 requirements for quality assurance and assessment in relation to any goods supplied and any adjustments related to variations where agreed;
- 3.4 ownership of all goods, facilities and services during the contract period and on its termination;
- 3.5 responsibility for dead bird disposal and its costs;
- 3.6 administrative responsibilities of the grower and the processor, with particular reference to matters such as:



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- 3.6.1 minimum records and their ownership;
- 3.6.2 insurances;
- 3.7 defining the rights of access of the processor to the property, grower records and goods, and the rights of access of the grower to relevant records kept by the processor, relating to the contract.

### **4 FINANCIAL MATTERS**

There should be provisions for:

- 4.1 definition of amounts payable. Contracts are to specify those elements of the contract which constitute an amount payable for the purposes of Clause 2.6.
- 4.2 details of arrangements for adjusting returns to all or any growers;
- 4.3 responsibilities for, and actions to be taken by, the processor and the grower in relation to disasters (including heat waves) influencing any batch of poultry, and the apportionment of costs and adjustments of growing fees associated with such disasters;
- 4.4 guidelines and criteria for assessing the performance of all growers or any individual grower, and any associated penalties or incentives;
- 4.5 distribution between grower and processor of any compensation monies received by the processor and/or the grower from any government body;
- 4.6 determination of the growing fee, including:
  - 4.6.1 matters that may be taken into account in determining the growing fee, such as:
    - processor requirements for the farm facility;
    - capital investment in farm facility requirements;
    - performance criteria;
    - biosecurity and quality requirements
    - costs incurred by the grower in meeting his obligations under his growing contract;
  - 4.6.2 periodic adjustment of the growing fee including:
    - the period over which a negotiated growing fee will apply;
    - the timing of reviews of the growing fee and the maximum period for completion of a review;
    - any agreed method for adjusting the fee.

**5 SCHEDULES TO THE CONTRACT:**

Which may include:

- 5.1 Farm Facility Standards
- 5.2 Farming Management Standards
- 5.3 Farm Biosecurity Standards

**6 OTHER MATTERS**

**Definitions**

**PROCESSOR NEGOTIATING GROUP (PNG)**

A body comprised of Processor Representatives and Grower Representatives to undertake the Functions in Section 1 of the Draft NSW Code of Practice for the Conduct of Negotiations between a Poultry Processor and its Contracted Growers.

**PARTICIPATING GROWER (PG)**

A grower contracted to the processor who has chosen to negotiate with the processor collectively with other growers and be represented on the PNG. A grower who has not notified the processor that he has chosen to be a NPG is deemed to be a PG.

**NON-PARTICIPATING GROWER (NPG)**

A grower contracted to the processor who has chosen to negotiate with the processor directly and independently of other growers, and has notified the processor of this in writing.

**POULTRY ADVISORY COMMITTEE (PAC)**

A Committee which may be appointed by the Minister for Agriculture consisting of one representative each from the Growers, Processors, Government and an Independent Person.

## COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Subsection 88 (1)

**AGREEMENTS AFFECTING COMPETITION: APPLICATION FOR  
AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection

\* to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

~~\* to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.~~

\* (Strike out whichever is not applicable)

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(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of applicant:

1. INGHAMS ENTERPRISES PTY LTD for itself and on behalf of

2. BARTTER ENTERPRISES PTY LTD

3. RED LEA CHICKEN PTY LTD

4. CORDINA CHICKEN FARMS PTY LTD

5. BAIADA POULTRY PTY LTD

6. SUNNYBRAND CHICKEN PTY LTD

7. NAREX AUSTRALIA PTY LTD T/A PENRITH POULTRY

8. SUMMERTIME CHICKEN PTY LTD

(See Direction 2 on the back of this Form)

(b) Short description of business carried on by applicant:

FULLY INTEGRATED CHICKEN MEAT PROCESSORS: RELEVANT  
BUSINESS RELATING TO AUTHORIZATION IS THE CONTRACT  
GROWING IN NEW SOUTH WALES OF CHICKENS WHICH ARE THEN  
PROCESSED, DISTRIBUTED AND MARKETED

(c) Address in Australia for service of documents on the applicant:

**INGHAMS ENTERPRISES PTY LTD**  
**LOCKED BAG 4000**  
**LIVERPOOL NSW BC 1871**

2. (a) Brief description of contract, arrangement or understanding and where already made, its date:

**BROILER CHICKEN GROWING CONTRACTS IN NEW SOUTH WALES**  
Specifically authorization is sought to permit the contract Growers of each Processor to engage in collective negotiations with their respective Processor on a standard growing agreement or agreements and matters arising therefrom including the agreement of a common fee or fees in accordance with a Code of Practice and Minimum Contract Guidelines.

Authorization is also sought to enable Growers to appoint representatives from among Participating Growers within their Processor Group to enter into negotiations with their Processor on a standard growing agreement or agreements and matters arising therefrom.

The negotiations, minimum contract standards and dispute resolution procedures will be conducted under a Code of Practice and Minimum Contract Guidelines which are agreed by all processors party to this application or by future processors who agree to the said Code and Guidelines.

The Code of Practice and Guidelines are detailed in the Attachment B and form part of the collective negotiation process for which Authorization is sought.

Interim Authorization to apply immediately is sought for the above conduct whilst the processes up until a final Determination are followed.

(b) Names and addresses of other parties or proposed parties to contract, arrangement or understanding:

**ALL CURRENT AND FUTURE NEW SOUTH WALES GROWERS**  
**CONTRACTED TO THE APPLICANTS LISTED IN 1(a) ABOVE**  
**CONTRACT GROWER ADDRESSES WILL BE PROVIDED SEPARATELY**  
(See Direction 4 on the back of this Form)

3. Names and addresses (where known) of parties and other persons on whose behalf application is made:

**N/A**

**Revised as of 17 August 2001**

4. (a) Grounds for grant of authorisation:

**AS SET OUT IN ATTACHMENT B**

(b) Facts and contentions relied upon in support of those grounds:

**AS SET OUT IN ATTACHMENT B**

(See Notice 1 on the back of this Form)

5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above-mentioned contract, arrangement or understanding

(a) Is this application to be so expressed?

**YES**

(b) If so, the following information is to be furnished:

(i) the names of the parties to each other contract, arrangement or understanding:

**N/A**

(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application:

**ALL FUTURE PROCESSORS WHO AGREE TO THE CODE OF PRACTICE AND MINIMUM CONTRACT TERMS**

**ALL FUTURE NEW SOUTH WALES GROWERS WHO ENTER INTO CONTRACT NEGOTIATIONS WITH PROCESSORS WHO HAVE AGREED TO THE CODE OF PRACTICE AND MINIMUM CONTRACT TERMS**

(See Direction 5 and Notice 2 on the back of this Form)

6. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*?)

**NO**

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

.....

(c) If so, by whom or on whose behalf are those other applications being made?

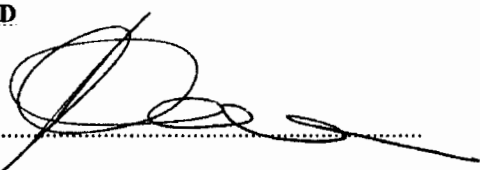
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**Revised as of 17 August 2001**

7. Name and address of person authorised by the applicant to provide additional information in relation to this application:

**JOHN R. HEXTON**  
**INGHAMS ENTERPRISES PTY LTD**  
**LOCKED BAG 4000**  
**LIVERPOOL NSW BC 1871**

Signed by/on behalf of the applicant .....



Full Name **JOHN RICHARD HEXTON**

Description **DIRECTOR CORPORATE SERVICES**  
**INGHAMS ENTERPRISES PTY LTD**

Date ..... *17 Sept 01* .....

## ATTACHMENT A

**TO ACCC APPLICATION FOR AUTHORIZATION  
FOR NSW CHICKEN GROWERS TO ENGAGE IN  
COLLECTIVE BARGAINING  
WITH  
THEIR PROCESSOR**

### PROCESSOR CONTACT DETAILS

1. John Hexton  
Inghams Enterprises Pty Ltd  
Locked Bag 4000  
Liverpool NSW BC 1871  
**Phone** 02 9826 4501  
**Fax** 02 9821 1836
2. Geoff Frost CEO  
Bartter Enterprises Pty Ltd  
PO Box 616  
North Ryde NSW 1670  
**Phone** 02 8870 0000  
**Fax** 02 8870 0093
3. G. Davey  
Red Lea Chickens  
Lots 4 & 5 Flushcombe Rd  
Blacktown NSW 2145  
**Phone** 02 9622 1455  
**Fax** 02 9831 3480
4. J. Cordina  
Cordina Chicken Farms Pty Ltd  
55 Mandoon Rd  
Girraween NSW 2145  
**Phone** 02 9912 1700  
**Fax** 02 9636 1995
5. J. Camilleri  
Baiada Poultry Pty Ltd  
642 Great Western Highway  
Pendle Hill NSW 2145  
**Phone** 02 9631 3389  
**Fax** 02 9636 9611
6. M. Fitzgerald  
Sunnybrand Chicken  
PO Box 525  
Byron Bay NSW  
**Phone** 02 6685 6384  
**Fax** 02 6685 7155
7. I. Dunn  
Penrith Poultry  
Lot D Frogmore Rd  
Orchard Hills NSW 2748  
**Phone** 02 4736 1233  
**Fax** 02 4736 2798
8. J. Cordina  
Summertime Chicken Pty Ltd  
55 Mandoon Rd  
Girraween NSW 2145  
**Phone** 02 9912 1700  
**Fax** 02 9636 1995

