



VICTORIAN CHICKEN MEAT COUNCIL
INCORPORATING THE MASTER POULTRY PROCESSORS ASSOCIATION OF VICTORIA

15th September, 2000

D00/32158



Ms. J. Palisi,
Project Manager,
Australia Competition Commission,
P.O. Box 1199,
DICKSON. ACT. 2602

Dear Ms Palisi,

Please find attached an "Application to A.C.C.C. for Authorisation for Growers to engage in Collective Bargaining with their Processor" and completed A.C.C.C. Form B, along with a cheque for \$7,500.

The parties request interim authorisation.

The names, addresses and contact details of the Processors who are party to the application under the auspices of the Victorian Chicken Meat Council are attached.

Also enclosed are the names and addresses of each Grower Group, Grower President, and the V.F.F. Chicken Meat Group President.

The Processors will be distributing this application to each grower contracted to a processor.

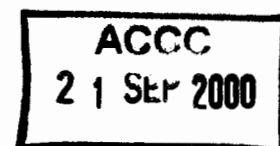
As noted in the application, the V.F.F. Chicken Meat Group has refrained from participating in the application at this time.

We understand that the V.F.F. does not wish to prejudice its option to maintain the current legislation.

Should you require any further information or clarification, please do not hesitate to contact me on (03) 9735 1122.

Yours sincerely,

G. A Marven,
President
V.C.M.C.



PRESIDENT: Gis Marven SECRETARY: Stuart Eade

P.O. Box 46, Forest Hill, Victoria 3131

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.....
CURRENT & FUTURE CONTRACTED GROWERS FROM WITHIN EACH
PROCESSING GROUP WITH VIEW TO NEGOTIATE COLLECTIVELY.
- (ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application..... TO BE COMPLETED

(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

7. Name and address of person authorised by the applicant to provide additional information in relation to this application.....
SISELA MAUVEN, PRESIDENT, VCITC, P.O. BOX 212,
LIMPOPO 2140.

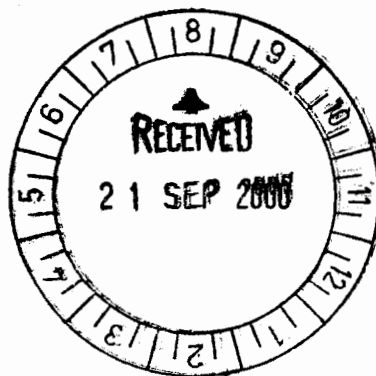
Dated..... 15. SEPTEMBER 2000

Signed by/on behalf of the applicant

[Signature]
 (Signature)

SISELA MAUVEN
 (Full Name)

PRESIDENT VCITC
 (Description)





VICTORIAN CHICKEN MEAT COUNCIL

INCORPORATING THE MASTER POULTRY PROCESSORS ASSOCIATION OF VICTORIA

Attachment 1

VFF –Chicken Meat Group

Mr Chris Jones (President)
24 Collins Street
Melbourne
Phone (03) 9207 5555

Inghams Enterprises-Grower Group

Mr Michael Shaw (President)
890 Derril Road
Moorooduc Vic 3933
Phone (03) 59 788 536

Bartter Enterprises –Grower Group

Mr Anthony Acciarito (President)
362 K Road
Werribee Vic 3030
Phone (03) 9742 1686

Eatmore Poultry –Grower Group

Mr Ron Metz (President)
Avendel Pty Ltd
310 Snell Road
Nar Nar Goon Vic
Phone (03) 59 428 337

Hazeldene Chicken Farm–Grower Group

Mr Glenn Bannister (President)
C/o Post Office
Lockwood Vic 3551
Phone (03) 54 353 487

Marven Poultry –Grower Group

Mr Chris Jones (President)
Punty Lane
Shoreham Vic 3916
Phone (03) 59 896 018

Farming Operations (Laionica) –Grower Group

Mr Cameron McDonald (President)
208 Frankston / Flinders Road
Hastings Vic 3915
Phone (03) 59 791 385

PRESIDENT: Gis Marven SECRETARY: Stuart Eade

**P.O. Box 46, Forest Hill. Victoria. 3131
Phone / Fax: (03) 9893 6320 or Email: jabats@optusnet.com.au**



VICTORIAN CHICKEN MEAT COUNCIL
INCORPORATING THE MASTER POULTRY PROCESSORS ASSOCIATION OF VICTORIA

Attachment 2

Processor Member Details

Inghams Enterprises Pty Ltd
Grant Road Somerville Vic. 3912
(PO Box 37 Somerville Vic 3912)
Mr Chris Turner (General Manager Victoria)
Telephone (03) 59 711 105-----Fax. (03) 59 712 008

Bartter Enterprises Pty Ltd
45 Leather Street Breakwater Vic 3219
(PO Box 379 Belmont Vic 3216)
Mr Patrick McCaffrey (General Manager Victoria)
Telephone (03) 52 223 744----Fax. (03) 52 276 601

Eatmore Poultry Pty Ltd
17 Pipe Road Laverton Vic 3026
Mr Morry Wroby (Director)
Telephone (03) 9360 0366----Fax (03)9369 7520

Hazeldene Chicken Farm Pty Ltd
345 High Street Kangaroo Flat Vic. 3555
Mrs Vicki Gaudion (Manager)
Telephone (03) 54 311 307----Fax (03) 54 353 215

Farming Operations Pty Ltd (Lsionica)
5 Lipton Drive Thomastown Vic 3074
Mr Gavin Eckersley (General manager)
Telephone (03) 9460 8833----Fax (03) 9787 1148

Marven Poultry Pty Ltd
Allenby Road Lilydale Vic 3140
(Po Box 812 Lilydale 3140)
Mrs Gis Marven (Chief Execetive Officer)
Telephone (03) 9735 1122----Fax (03) 9735 4394

PRESIDENT: Gis Marven SECRETARY: Stuart Eade

**P.O. Box 46, Forest Hill. Victoria. 3131
Phone / Fax: (03) 9893 6320 or Email: jabats@optusnet.com.au**

**APPLICATION TO ACCC
FOR AUTHORIZATION**

**FOR CHICKEN GROWERS
TO ENGAGE IN
COLLECTIVE BARGAINING
WITH
THEIR PROCESSOR**

By

***VICTORIAN CHICKEN MEAT
COUNCIL (PROCESSORS)***

September 2000

AUTHORIZATION APPLICATION TO ACCC

CONTACT DETAILS

VICTORIAN CHICKEN MEAT COUNCIL (PROCESSORS)

GIS MARVEN
PRESIDENT

STUART EADES
SECRETARY

155 Mahoneys Rd
(PO Box 46)
Forest Hill
Vic 3122

Phone 03 9893 6320

TABLE OF CONTENTS

BACKGROUND	1
PARTIES	3
AUTHORIZATION REQUESTED	3
AUTHORIZATION PERIOD	4
DIFFICULTIES WITHOUT INTERIM AUTHORIZATION	4
THE MARKET	4
Chicken Meat	4
The Companies	5
Chicken growing Services	6
CURRENT ARRANGEMENTS	7
VBINC	7
Growing fee	7
Determinations	8
LIKELY CONSEQUENCES OF NON APPROVAL	9
PUBLIC BENEFITS	11
DETRIMENTAL EFFECTS	12
ATTACHMENT	13
MINISTERIAL ADVISORY COMMITTEE	13
CODE FOR GROWER COLLECTIVE AGREEMENTS	13
Extent of Guidelines	14
GUIDELINES	14
Growing Contract	18
Definitions	20

APPLICATION TO ACCC FOR AUTHORIZATION OF COLLECTIVE BARGAINING BY GROWERS

BACKGROUND

NCP Review Outcome

The National Competition Policy (NCP) Review in Victoria of the Broiler Chicken Industry Act 1978 recommended:

Given the Guidelines and our findings set out in this Report, the case for the retention of the broiler chicken legislation is not established by its proponents. Accordingly the Act and Regulations should be repealed.

In addition the Review asserted:

That members of the Victorian Broiler Industry Negotiating Committee are at risk of breaching Part IV of the Trade Practices Act (TPA) when they determine the grower fee and other contract conditions.

Trade Practices Act is being Breached

Subsequent legal advice confirms that the TPA would be breached by continuation of the existing arrangements under the Broiler Industry Act 1978 and the Broiler Chicken Regulations 1992. The status quo is not an option, there has to be a change.

The Minister for Agriculture, the Honorable Keith Hamilton and the Government is seeking a way forward which will ensure

- that Growers who elect to do so, may retain the right to collectively negotiate their contract terms and conditions,
- that the Government's obligations under the NCP Agreement are fully met and
- that the TPA will not be breached.

Concerns of Interested Parties

Growers are concerned about a perceived imbalance of bargaining power between themselves and Processors if the Act were repealed and the Industry deregulated completely.

The Minister is concerned about a perceived imbalance of bargaining power. He has requested a Code of Conduct which includes minimum contract standards and dispute resolution procedures to ensure that any imbalance in bargaining power is addressed.

The Processors recognize the Grower concerns and also have reservations about the practicality of individually negotiating contract terms and conditions with each Grower. The Processors believe that if Growers were able to collectively negotiate, if they elected to do so, with their respective Processor, Grower interests would be safeguarded and a practical, cost effective system which is superior to the current system could be implemented.

AUTHORIZATION APPLICATION TO ACCC

Processor-Grower group Negotiations

Negotiations by Growers on a collective basis with each of their respective Processors would allow more relevant contracts to be developed than under the current system. These contracts would better reflect the situation facing each Processor and its Grower group, allow greater flexibility in rewarding superior performance, lead to an improved allocation of resources and result in stronger economic outcomes for both parties.

The cost of negotiations would be reduced in comparison to negotiating individually with each Grower. Individual Growers however will retain the right to opt out of collective negotiations and to negotiate specific contracts with Processors.

Authorization by the ACCC to permit Growers to negotiate collectively contract terms and conditions, if they elect to do so (Participating Growers), with their respective Processor offers a practical and effective way of satisfying the interests of all parties.

Code of Conduct to safeguard Growers' interests

Growers' interests may be further safeguarded by including the Code of Conduct agreed by all Processors as part of the Authorization. The Code sets out the process for Participating Growers to appoint from among themselves, Growers who with the Processor representatives will form a Processor Negotiation Group. This Group will negotiate the Collective Agreement. There may be more than one Processor Negotiation Group (if the Processor agrees), so that more than one Collective Agreement may be in place with a Processor to better reflect any varied conditions among Growers associated with that Processor.

The Code also contains conditions and dispute resolution procedures which will be included in contracts, a further safeguard to Growers.

Authorization for the conduct of collective negotiations has been provided in South Australia and Tasmania by the ACCC and the arrangements are working satisfactorily.

AUTHORIZATION APPLICATION TO ACCC

PARTIES

The Victorian Chicken Meat Council (Processors) is seeking **Authorization and Interim Authorization** so that Contract Growers (either current or future) who elect to negotiate collectively may form Processor Negotiating Groups (PNGs) from among Growers contracted to each Processor to undertake negotiations with their respective Processor.

The VFF Chicken Meat Group, which represents a number of Growers, has refrained from participating in the application at this stage. It is understood the VFF does not wish to close off or place in jeopardy any option it might have in relation to continuing the current legislation.

The Processors listed below are parties to this application. They provide all the live birds for processing by all processors in Victoria.

1. Bartter Enterprises Pty Ltd
2. Eatmore Poultry Pty Ltd
3. Hazeldene Chicken Farm Pty Ltd
4. Inghams Enterprises Pty Ltd
5. La Ionica Farming Operations Pty Ltd (supplier to the processor La Ionica)
6. Marven Poultry Pty Ltd

AUTHORIZATION REQUESTED

Application is made under subsection 88(1) of the Trade Practices Act 1974 for authorization to make or give effect to a contract arrangement or understanding that has the purpose or effect of substantially lessening competition within the meaning of section 45 of the TPA.

Specifically authorization is sought to permit the contract Growers of each Processor to collectively negotiate a standard growing agreement or agreements and matters arising therefrom with their respective Processor including the agreement of a common fee or fees.

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 Conduct which is agreed by all Processors party to this application or by future Processors who agree to the said Code.

The Code of Conduct is attached to and forms part of the collective negotiation process for which Authorization is sought.

AUTHORIZATION PERIOD

Full Authorization

Authorization is sought for 5 years. Interim Authorization is sought immediately.

A 5 year period will permit existing contracts, which are allowed to run to completion (mutual agreement could terminate them), to mature and permit negotiations under the new arrangements. It will also allow sufficient time for new contracts to run and to observe and understand how the system operates and for parties to become used to the new arrangements.

An application for an extension to the Authorization may be made at the end of the period depending on the circumstances then applying to the Industry.

Interim Authorization

Interim Authorization is sought immediately because legal advice is to the effect that the current arrangements for setting and revising the growing fee violates the TPA. The existing fee is scheduled to expire on 31st December 2000.

The Minister is reluctant to repeal the existing Act without a way forward being found, but Processors and Growers cannot risk being exposed to penalties for breaching the TPA by complying with the existing Act and Regulations.

DIFFICULTIES WITHOUT INTERIM AUTHORIZATION

Without interim Authorization, there will be a conflict between State and Federal legislation with presumably Federal legislation taking precedence.

In that case negotiations will have to be undertaken individually by Growers with their Processor and there could be considerable short term disruption because of the sudden change in the industry arrangements. It is argued below that individual negotiation will result in ongoing costs to the Industry and the Community as well as transitional costs.

THE MARKET

There are two markets of interest, the market for chicken meat and the market for chicken growing services.

CHICKEN MEAT

The production of chicken meat in Victoria is about 190,000 tonnes annually from 2.1 million birds per week and represents around 28 per cent of Australian production. Most production is consumed in Victoria, with some 10 per cent or so exported interstate and possibly 2-3 per cent exported overseas, depending on opportunities.

The Victorian market is highly competitive with product pricing a major weapon employed by companies to gain and hold markets. The retail sector (particularly supermarkets) and the food service industry (firms such as MacDonalds, KFC, Red Rooster) are the major market outlets. Only about 10 per cent is sold under a contract

AUTHORIZATION APPLICATION TO ACCC

with a set period and specifications and only a few contracts have fixed prices. Accordingly strong pressure is focussed on price and on production costs.

The critical significance of costs and the need to supply significant volumes of consistent product to service customers necessitates very tight control of all operations. These pressures have led the Industry globally to vertically integrate operations.

THE COMPANIES

Six integrated firms provide all day the old chicks to contract and company farms for all the chickens grown in Victoria. These six firms also process most of the chickens grown. The market shares of the six firms and number of contract farms are set out in Table 1. The non-integrated processors are predominately supplied (about 80 per cent) with live birds by Eatmore.

Inghams and Bartters are national firms with Inghams operating in all States. Bartters until recently was a regional supplier based in Griffith, southern NSW and sent about 45 per cent of its production into the Victorian market (some 16%). Now due to its acquisitions of Steggles it has farm and processing operations in all States except Tasmania.

Table 1: Market share of suppliers of chickens to Victoria and contract farms in Victoria.

Company	Market share (%)	Contract farms
Inghams Enterprises Pty Ltd	29	54
Bartter Enterprises Pty Ltd	18	33
Eatmore Poultry Pty Ltd	20	62
Marven Poultry Pty Ltd	13	32
Hazeldene Chicken Farm Pty Ltd	11	11
La Ionica	9	16
Total	100	208

The firms have processing plants at Somerville (Inghams), west of Geelong (Bartter), Laverton (Eatmore), Lilydale (Marven), Thomastown (La Ionica) and Bendigo (Hazeldene).

Processed chickens can be economically transported and distributed some distance to satisfy market demand. Both Bartter and Inghams send or receive some product from other States for further processing and other companies transport raw product for interstate, specialized production lines. Hazeldene routinely moves product to Melbourne and South Australia.

CHICKEN GROWING SERVICES

The market for chicken growing services is derived from the demand for chicken meat and will be impacted by conditions affecting chicken meat market demand.

Demand for services and inputs at a plant will be affected by the demand for product from that local processing site. If input costs to a particular plant undergo a sustainable rise, product may be substituted into the market from other lower cost plants. There will be a consequent decrease in quantities demanded for all inputs including growing services at the high cost site.

Contract farms are the norm

Growing services are typically outsourced as a way of conserving capital. The processor provides the key inputs: chicks, feed and technical advice.

The grower provides chicken housing facilities, labour and management. The grower services are capital intensive. For example the replacement costs of shed and equipment in the 60,000 sq ft model farm used in the base year (commencing 1998) fee setting by the Victorian Broiler Industry Negotiation Committee (VBINC) is nearly \$900,000 and land is an additional \$250,000.

Some Processors have company farms. Inghams and Bartter have one each, Eatmore has two and Hazeldene produces around 45 per cent of its chickens from company farms. (Bartter was all company farms (in NSW) until it took over the much larger Steggles operations).

Majority of Growers have choice of Processor

Growing farms tend to be located relatively close to the processing plant and associated feed mills to minimize transportation costs and ensure quality of finished birds. Inghams, Marven and La Ionica all have farms on the Mornington Peninsula and in East Gippsland. Eatmore has farms on the Mornington Peninsula, north and west of Melbourne, Bartter in the surrounds of Geelong and to the west of Melbourne. Hazeldene has farms in the Bendigo area.

The NCP Report by KPMG (p22) stated that only 10 Growers in one region, Bendigo and surrounds faced a monopsony, (a single buyer). The clear majority of Growers, located in the Mornington Peninsula/East Gippsland regions have at least four buyers.

KPMG concluded that at most there could be three markets for growing services and that more likely there could be two. These two markets would be the regions around Melbourne serviced by five Processors and Bendigo serviced by Hazeldene.

CURRENT ARRANGEMENTS

Information on the Broiler Chicken Industry Act and the Regulations are set out in detail in the NCP Review Report undertaken by KPMG.

VBINC

VBINC determines a standard growing fee per bird, terms and conditions which must be included in all contracts and determines disputes between Growers and Processors.

VBINC consists of an independent Chairman, 4 Grower and 4 Processor representatives and 2 other Independents. In practice when Processors and Growers disagree, it is the Independents who determine the outcome of deliberations.

GROWING FEE

A standard growing fee applies across the whole Industry. The current arrangements make no allowance for any differences in the supply or demand conditions which might exist between any farms or any Processors. The same standard fee applies even across the rural Bendigo and the more heavily populated Melbourne producing areas.

The fee applicable to any particular Processor though varies slightly depending on productivity factors deemed under the control of the Processor. These factors are batch rate, bird density and bird mortality. The variation though is restricted to a $\pm 3\%$ limit unless mutually agreed by the Processor and affiliated Growers.

Fee to Growers

The actual fee paid to an individual Grower depends on that Grower's efficiency within a pool. A pool consists of all Growers who receive a batch of day old chicks at a particular time. (Growers may be in several pools). Each pool size is determined by the Processor's grow fee multiplied by the number of live birds collected.

Growers receive a differential per bird fee depending on their relative position within the pool which in turn is determined by the Feed Conversion Ratio or the Full Cost measure. The spread, however between the best and the worst performing growers in percentage terms is limited (or compressed) by the decision of the majority of Growers contracted to that Processor. (The Processor has no say in the spread). The more efficient growers are subsidizing the less efficient ones. The pool spread varies between 5 and 25 per cent across Processors and is typically 15 per cent.

Standard fee is based on a cost of production model

The current standard fee is based on a model farm (essentially a cost of production model) and was set for 3 years commencing on 1st January 1998. The fee is adjusted (if necessary) each 6 months for productivity changes and as a proportion of CPI movements (70%) over the preceding 6 months.

AUTHORIZATION APPLICATION TO ACCC

The new model farm for 1998, however produced a fee which was lower than the fee then being paid. Rather than reducing the fee, VBINC determined that a rate of 49 cents would operate until such time as CPI movements caused the model fee to exceed that amount.

The current standard fee expires on 31st December and new arrangements have to be put in place to permit current fees to be altered because as noted the existing process violates the TPA.

DETERMINATIONS

Determinations of VBINC are binding and pervasive. Because of the composition of VBINC determinations are generally compromises between two positions and the outcome is applied across the whole Industry. Some determinations of course are relevant to particular Processor/Groups but others apply to all Processor/Grower groups. Determinations stay on the books unless they are actively removed, even if the circumstances under which they were set are no longer relevant.

VBINC operates in such a transparent manner that all Processors and Growers (at least through their representatives) know all 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.

LIKELY CONSEQUENCES OF NON APPROVAL

Short run

In the short run non approval of interim Authorization will lead to a difficult situation because legal advice suggests that the current State legislation is in conflict with the TPA. As noted the current fee arrangements expire 31st December. Neither Processors or Growers can afford to risk the associated penalties of contravening the TPA, therefore the current fee setting process cannot be used.

There could be considerable dislocation costs as individual Growers and the Processors have to adjust immediately to a new, unknown, but possibly fully deregulated negotiating regime. In the extreme, non approval may lead to industrial activity. Such activity may severely affect Victorian chicken meat production, Processors, employees and all input suppliers. The State/regional Processors and their suppliers could be expected to be disproportionately affected, because the national firms could import product from their plants in other States.

The intermediate to longer term consequences could be ongoing distrust between Growers and Processors, a loss of Victorian production capability as national firms may gain a market advantage over Victoria only based firms or may continue to source from interstate rather than fully resume Victorian production to pre-disruption levels.

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 Minister is concerned that the Growers do not suffer an imbalance in bargaining power. Authorization will directly address that concern and should allow the Minister to repeal the Act. A failure to grant Authorization may cause the Minister to adopt a legislative path which continues to impose restrictions on 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.

Adverse consequences

Focussing just on a lack of ability to negotiate collectively and leaving aside other outcomes from any new legislative/regulatory regime, it is suggested that non approval will lead to a number of undesirable social and economical consequences.

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.

Given the nature of the Industry (refer to the modelling work undertaken and elasticities used in the NCP Review) any increase in costs will be passed onto the Consumer and essentially decrease public benefits by the amount of the cost increase. (The overall public costs are the net result of changes to all parties).

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.
- 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.
 - The opportunity for pre-emptive arrangements to be included will be enhanced.
- Increased consumer satisfaction due to an increased ability to adjust production to meet the needs of consumers.
 - 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 Victorian Industry (and hence employment in regional areas) which is better equipped to withstand interstate competition, competition from overseas imports (which are likely) and competition from other products.
- A more rapid growth rate.

Benefits are expected to flow through to the Consumer because of the nature of the Industry as discussed.

DETRIMENTAL EFFECTS

The major detrimental effects are that 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.

ATTACHMENT

MINISTERIAL ADVISORY COMMITTEE

The Minister for Agriculture will appoint an Advisory Committee 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:

- the VFF (Chicken Meat Group), for the Grower representative,
- the VCMC (Processor Group) for the Processor representative and
- the Department of Natural Resources and Environment for the 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 Operation for 3 years.

- The Committee will report monthly until final Authorization is received and thereafter quarterly.
- The Committee, through its Chair has the right to report on matters at any time to the Minister.

CODE FOR GROWER COLLECTIVE AGREEMENTS

The Code of Conduct for the Victorian Chicken Meat Industry sets out guidelines to be followed when an ACCC Authorized Collective Agreement is being developed. The rights and restrictions which apply to growers who elect to negotiate individually with a Processor are also set out.

The Code of Conduct consists of guidelines and contains minimum standards which are to form part of the collectively agreed Growing Contract. The detail which is agreed by the parties will be set out in each Growing Contract negotiated. The Growing Contracts may contain other or differing actions and procedures which have been agreed by both parties.

Growers who elect to negotiate collectively with their individual Processor under ACCC Authorization will be known as Participating Growers (PGs). The PGs will need to appoint from among themselves, growers who with Processor representatives will form a Processor Negotiation Group (PNG) to negotiate the Collective Agreement.

EXTENT OF GUIDELINES

The guidelines cover:

- Formation, functions, composition, appointment of representatives and meetings of the PNG;
- How matters agreed or not agreed by the PNG are to be dealt with including matters related to individual growers;
- Dispute/mediation mechanisms;
- Rights of Non- Participating Growers (NPGs) and
- Standards to be included in Collective Contracts.

GUIDELINES

1. Formation of Processor Negotiation Groups (PNG)

The Growers and each Processor need to establish their own PNGs if Growers wish to collectively negotiate.

- 1.1. A ballot will be held among the Growers aligned with each Processor as soon as practicable to determine if they wish to negotiate collectively.
- 1.2. Providing that an agreed percentage (say a majority) of growers wish to negotiate collectively, then a PNG will be formed.
- 1.3. More than one PNG may be formed with the agreement of the Processor.
- 1.4. If the number of Participating Growers falls below the agreed percentage in 1.2 then the PNG will lapse.
- 1.5. A PNG may be reformed if a ballot of all Growers contracted to that Processor achieves the percentage agreed in Clause 1.2.

2. Functions of PNG

Each PNG may agree its own functions, but may include the following:

- 2.1. To negotiate the terms and conditions of the Growing Contract to be utilized by Participating Growers including the operation of pooling and other joint incentive arrangements to be used for PGs.
- 2.2. To negotiate the payments to be made to growers and the procedures for the regular review of such payments.
- 2.3. To negotiate changes to operational procedures desired by either the PGs or the Processor and where appropriate to negotiate financial consideration for such changes.
- 2.4. To act as a mediator for the resolution of disputes between all PGs or any individual PGs and the Processor.
- 2.5. To take back to meetings of PGs (or individuals where appropriate) for decision the outcomes of negotiations or resolutions.
- 2.6. To make determinations or to take action on any other matters that the PNG agrees.

3. Composition of the PNG

The composition of each PNG may vary depending on the number of Growers and what they agree with their Processor.

- 3.1. Grower Representatives numbers are to be decided between the PGs and the Processor having regard to the size of the PG group.
- 3.2. Processor Representatives numbers are not to exceed the number of Grower Representatives.

4. Appointment of Representatives

Each PNG may determine its own details of appointing representatives.

- 4.1. The Processor will appoint Processor representatives.
- 4.2. PGs will elect for an agreed term from among themselves their representatives.

5. Meetings of the Group

Each PNG may establish its own detailed meeting procedures, but the following guidelines are suggested.

- 5.1. Meetings will be held as required.
- 5.2. Meetings are to be called if requested by the Processor or if more than 50 per cent of Growers on the PNG request one.
- 5.3. The PNG may appoint a Chairman, but the Chair has no casting vote.
- 5.4. A quorum is to consist of one Processor representative and at least two thirds of the Grower representatives.
- 5.5. Matters can only be agreed if the Processor representatives and a majority of the Grower representatives agree.
- 5.6. Costs incurred in carrying out any of the functions of the PNG are to be met equally by all PGs and the Processor unless otherwise agreed.

Each PNG is able to establish its own procedures for dealing with matters which are resolved, unresolved or which deal with individual Growers. The following Clauses set out general procedures.

6. Agreed Resolutions of the PNG – *Matters relating to all Growers*

- 6.1. An agreed resolution of the PNG will be notified to all PGs prior to a meeting called to consider the resolution.
- 6.2. The PNG including the Processor will be present.
- 6.3. The resolution shall be put on a show of hands to all Growers in attendance at the meeting and if carried by a majority become binding on all PGs.
- 6.4. If a resolution is not approved as in 6.3, the meeting shall determine on a show of hands whether the matter be referred back to the PNG for further consideration or be determined in accordance with the Dispute resolution/Mediation procedures set out in the Growing Contract (see Clause 9 below for guidelines).

7. Agreed Resolutions of the PNG – *Matters relating to an Individual Grower*

- 7.1. The agreed resolution of the PNG will be notified to the Grower.
- 7.2. The Grower will within fourteen (14) days notify the PNG as to whether the resolution is accepted or if the matter is to be resolved in accordance with the Dispute resolution/Mediation procedures set out in the Growing Contract (see Clause 9 below for guidelines).

8. Matters not resolved by the PNG - *Matters relating to all Growers*

- 8.1. The matter in dispute will be notified to all PGs prior to a meeting eligible to be attended by the Processor and all PGs called to consider the matter.
- 8.2. The Processor and the Grower representatives on the PNG will outline their positions to the meeting, which will consider the issues.
- 8.3. The matter shall be put as a resolution to the meeting either by a show of hands or a secret ballot among the PGs. A secret ballot may be requested by the Processor or by the majority of Grower representatives on the PNG.
- 8.4. The resolution will become binding if accepted by the Processor and approved by a majority of PGs.
- 8.5. If the resolution is not approved as in 8.4, the matter will resolved in accordance with the Dispute resolution/Mediation procedures set out in the Growing Contract (see Clause 9 below for guidelines).

9. Disputes/Mediation

The detail of dispute resolution/mediation procedures are to be set out in each Growing Contract and if agreed may differ from these guidelines. The guidelines emphasize agreement being reached through the offices of the PNG and if that's not possible then it is referred to mediation. Arbitration is only used as a last resort and then only in matters relating to monies payable unless agreed by both parties. The right for parties to undertake litigation remains.

- 9.1. The aggrieved party is to notify the matter in dispute in writing to the other party and to the PNG.
- 9.2. The PNG is to consider the matter and attempt conciliation.
- 9.3. If after ninety (90) days of the serving of the written notice, the matter is not resolved between the parties and both parties agree, the matter can go for mediation to an agreed external mediator.
- 9.4. If after 28 days (or such time as agreed by the parties), mediation is not successful, the matter may go if agreed by both parties for arbitration.
- 9.5. In the case of amounts payable only; if mediation under Clause 9.3 is not resolved within 28 days (or such time as agreed by both parties) after appointment of a mediator, the matter is to be referred to arbitration.
- 9.6. The arbitrator is to be a person agreed to by both parties or if agreement is not forthcoming by an arbitrator appointed by the Institute of Arbitrators and Mediators Australia.
- 9.7. The costs of mediation or of arbitration to be borne by each party is to be determined by the mediator or arbitrator.

10. Meetings of Growers

- 10.1. The Grower representatives on the PNG may meet as and when required on their own, with PGs and with advisers to discuss relevant matters.

11. Non Participating Growers (NPG)

- 11.1. A Grower may at any time withdraw from the collectively negotiated contract with the Processor's agreement by advising the PNG in writing.
- 11.2. An NPG may negotiate directly with the Processor on any matter.
- 11.3. An NPG will not be eligible to participate in ballots for election of representatives on the PNG, nor to attend meetings convened by the PNG.
- 11.4. An NPG at the end of the relevant contract period may elect to join the collective agreement by notifying the PNG in writing to that effect.

GROWING CONTRACT

The Growing Contract will be valid for a stated number of years and be similar to the existing contract, but each will be developed according to the needs and circumstances of Participating Growers and their Processor. All Growing Contracts negotiated with a PNG will provide for:

12. Terms of the Agreement

- 12.1. Terms will include the commencement, expiry date and arrangements for notification of and response to intentions to enter into negotiations in relation to a new contract.

13. Inputs to be provided by Growers and responsibilities

- 13.1. A clear statement of the inputs to be provided, their ownership and the standards to be maintained by the Grower.
- 13.2. The responsibilities of the Grower regarding and including insurance coverage, record keeping, reporting and access to Processor representatives and sanitation measures.
- 13.3. The responsibility for all costs incurred is to be clearly stated.

14. Inputs to be provided by the Processor and responsibilities

- 14.1. A clear statement of the requirements in relation to the rearing of birds is to be set out.
- 14.2. All inputs and services which are to be provided, ownership and responsibilities for costs are to be clearly stated.
- 14.3. Notice of delivery and collection times are to be stated.

15. Terms of Payment

- 15.1. The payment to be made for growing the chickens having due regard to Processor requirements and the Grower's investment and costs incurred in growing the chickens. The factors to be taken into consideration in negotiating the fee include but are not limited to:
 - 15.1.1. Performance and throughput criteria
 - 15.1.2. Processor requirements for the farm facility
 - 15.1.3. Investments in land, shedding and equipment
 - 15.1.4. Maintenance and running costs
 - 15.1.5. Labour costs
 - 15.1.6. Utility charges
 - 15.1.7. Statutory/regulatory costs
 - 15.1.8. Market conditions
- 15.2. Details of adjustments to payments to be made to any and all Growers.

- 15.3. An agreed period over which the payment will apply.
- 15.4. The payments are to be reviewed regularly at agreed intervals.

16. Guidelines for measuring the efficiency of Growers and any adjustments based on those measurements.

- 16.1. Factors include but are not limited to the following:
 - 16.1.1. Efficiency measures such as FCR (feed conversion ratios), mortality, growth rates
 - 16.1.2. Production costs per batch (particularly feed usage)
 - 16.1.3. Standards of quality:
 - 16.1.3.1. live bird quality (bruising, breast blisters, full feed crops)
 - 16.1.3.2. facilities
 - 16.1.3.3. biosecurity
 - 16.1.3.4. environmental
 - 16.1.3.5. occupational health and safety
 - 16.1.3.6. quality assurance (ISO systems, HACCP)

17. Government compensation monies

- 17.1. Agreement to negotiate to apportion between the parties any relevant Government compensation monies where such monies are received by the Processor and include a payment relating to the growing fee due to the Grower.

18. Dispute resolution/Mediation procedures

- 18.1. These are to be developed based on the Guidelines in the Code of Practice, Clause 9.

19. Force Majeure Provisions

20. Rights of Assignment

- 20.1. With proper written notice neither party should unreasonably withhold approval providing the contract terms are substantially the same.

21. Termination of the Contract/Default Provisions

- 21.1. The conditions under which the contract with a PG may be terminated.
- 21.2. The conditions under which a contract default by either party occurs should be set out.

DEFINITIONS

PG Participating Grower, that is one who elects to enter into a collective negotiation with the Processor in relation to a Growing Contract.

PNG Processor Negotiation Group, a Group consisting of Processor and Grower representatives who undertake negotiations on Growing Contract terms and conditions and who act as the initial conciliators in any Disputes.

NPG Non Participating Growers, Growers who have elected to enter individual contracts with the Processor.