



02 March 2011

Mr Peter Eynaud
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Dear Mr Eynaud

**WESTERN AUSTRALIAN BROILER GROWERS ASSOCIATION APPLICATION FOR
AUTHORISATION A91262**

The Department of Agriculture and Food Western Australia (the department) notes that the Australian Competition and Consumer Commission (the ACCC) has, on 25 February 2011, granted interim authorisation for Western Australian chicken growers to collectively bargain with the chicken processors for whom they grow broiler chickens.

The department is supportive of the interim authorisation and attaches here a submission in relation to the ACCC decision process for reaching a draft determination.

The department is agreeable to this submission being placed on the ACCC's public register.

Please do not hesitate to contact me if further information is required.

Yours sincerely

Dr Kevin Chennell
EXECUTIVE DIRECTOR
LIVESTOCK INDUSTRIES DEVELOPMENT

3 Baron-Hay Court South Perth Western Australia 6151

Telephone (08) 9368 3821 Facsimile (08) 9474 6807

www.agric.wa.gov.au
wa.gov.au

SUBMISSION BY DEPARTMENT OF AGRICULTURE AND FOOD WESTERN AUSTRALIA IN SUPPORT OF WESTERN AUSTRALIAN BROILER GROWERS ASSOCIATION'S APPLICATION FOR AUTHORISATION A91262

BACKGROUND

The *Chicken Meat Industry Act 1977* (the Act) was introduced in Western Australia to "improve the stability of the chicken meat industry" at a time when there had been rapid expansion of the chicken meat industry sector. The Act was originally enacted to expire on 31 December 1989, but was continued pursuant to the process set out in Section 29 for successive periods of 7 years.

The Act established the Chicken Meat Industry Committee (the Committee) the main functions of which were to determine the average fee for service to be paid by processors to grow out broiler chickens; to facilitate collective negotiations between growers and processors and to mediate disputes. The Act also provided for the average growing fee to be determined on the basis of a notional model of an efficient chicken growing operation.

The legislation required that the Act's effectiveness be reviewed and a report prepared after 5 years have elapsed of each period of 7 years. The Act may then be continued for a further period of 7 years by the Minister for Agriculture and Food publishing a notice to that effect. If such a notice is not published then the Act automatically expires.

The Economic Regulation Authority (the Authority) conducted an inquiry into the Act at the request of the Treasurer in 2010. The Authority's Final Report, tabled in State Parliament on 29 November 2010, firmly recommended that the Act not continue on the grounds that:

- The benefits to society of the Act are unlikely to outweigh the costs of the legislation.
- There are serious problems with the sector under the existing legislation which are unlikely to be resolved if it continued.
- There are sufficient protections available to producers under normal commercial law in Australia to make such regulation obsolete.

In considering the Authority's report the Minister for Agriculture and Food, the Hon Terry Redman MLA, took advice from the Department of Agriculture and Food (the Department); met with representatives of Baiada Poultry, Inghams Enterprises, Finesse Foods and the Western Australian Broiler Growers Association; and briefed Members of Parliament whose electorates contain the majority of chicken growers.

On balance, the Minister decided to allow the Act to expire as recommended by the Authority and the Department. The Western Australian State Government Cabinet endorsed the Minister's decision and the Act ceased to have effect from 31 December 2010.

ISSUES

The production and processing of chicken meat in Western Australia is dominated by two national, vertically-integrated processors, Baiada and Inghams, who contract out the growing of chickens to approximately 30 individual growers.

Chicken meat production in Western Australia has plateaued over the last 10-15 years at about 60,000 tonnes per annum while demand has risen strongly due to increased consumption and population growth.

The widening gap between production and demand is being met by imports, with about 14% of fresh chicken meat consumed in Western Australia now coming from the eastern states, particularly South Australia which has seen rapid growth in its chicken industry.

Modest on-going increases in per capita consumption coupled with a projected population increase of between 800,000 and 1.5 million by 2030 indicates the State will need at least 40,000 tonnes of additional chicken meat annually.

This creates a substantial opportunity for economic growth, prosperity and jobs in Western Australia, but if the industry is to capture this opportunity major investments are required by the processing sector in hatcheries, breeder farms and processing plants.

Such investment has not been forthcoming in recent times and both Baiada and Inghams advised the Department in December 2010 that their current position was not to make substantial investments in Western Australia. However, each processor indicated a willingness to enter into dialogue with the State Government about future investments.

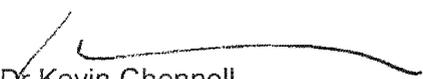
The Department was also mindful that the Authority's report acknowledged that there is an imbalance in bargaining power between the processors and the growers, and accepted that collective bargaining could improve the position of growers and potentially reduce transaction costs associated with contract negotiations.

The Authority noted that it was likely the Australian Competition and Consumer Commission (ACCC) would grant authorisation to Western Australian growers to collectively bargain with processors, as it has done in other States, if the Act was to expire.

The Department considers ACCC authorisation an important element of an orderly and professional transition to a deregulated environment and strongly supports the application by the Western Australian Broiler Growers Association.

For its part, the Department is committed to facilitating strong and sustainable economic growth of the State's chicken meat industry. Where appropriate the Department will:

- Work with producers and processors to reduce uncertainty and build trust as new arrangements are developed.
- Provide support for producers to obtain ACCC authorisation to participate in collective bargaining, and assist in bedding down new arrangements.
- Work with producers to assist them to overcome waste management issues, particularly waste water management and chicken litter disposal.
- Work with processors to develop options and opportunities for establishing new hatchery, breeder and processing facilities which are necessary for industry growth in Western Australia.


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