

QUEENSLAND CHICKEN GROWERS ASSOCIATION

PO Box 12009, George Street, BRISBANE, QLD, 4003
Level 6, Primary Producers House, 183 North Quay, BRISBANE
Phone: (07) 3837 4747 Fax: (07) 3236 4100

ABN 86 881 788 599
Email: brad@qff.org.au

5th November 2012

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

BY EMAIL: adjudication@accc.gov.au

Application for Authorisation made by the Queensland Chicken Growers Association Inc.

Dear Dr Chadwick,

Please find attached:

1. Copy of I dated letter dated 15th October 2012 waiving the application fee.
2. Application for Authorisation Form B being an application made by the Queensland Chicken Growers Association Inc on behalf of its members.

We would appreciate it if the application could be considered under the streamlined process as if the application is successful we will need to commence negotiations with the Queensland Government regarding the repeal of the existing legislation in Queensland which currently authorises collective bargaining.

Yours Sincerely,



Jodie Redcliffe
President



**Australian
Competition &
Consumer
Commission**

Contact Officer: Jaime Martin
Contact Phone: (03) 9290 1477

GPO Box 3131
Canberra ACT 2601
23 Marcus Clarke Street
Canberra ACT 2601
tel: (02) 6243 1111
fax: (02) 6243 1199
www.accc.gov.au

15 October 2012

Jodie Redcliffe
President
Queensland Chicken Growers Association
PO Box 12009, George Street
Brisbane QLD 4003

Via email: brad@qff.org.au; qfarmers@qff.org.au

Dear Ms Redcliffe

Fee waiver request

I refer to your letter dated 8 October 2012 to the Australian Competition and Consumer Commission (ACCC) in respect of a proposed collective bargaining application for authorisation. In your letter you have requested that the ACCC grant a fee waiver in respect of the proposed arrangements.

In particular, you have requested that the fee to be paid in relation to the proposed application for authorisation to be lodged by the Queensland Chicken Growers Association (the Association) be waived, at least in part.

In support of your request, you submitted that:

- the Association is a not-for-profit organisation
- there are only 73 members and
- the full application fee (of \$7500) would represent approximately 8-10 per cent of the Association's annual operating budget.

Having regard to the above, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I wish to advise that the application fee to be paid by the Association has been waived in whole. Therefore no application fee will apply.

This decision will remain in force for a period of three months. The three month period will expire on 15 January 2012.

A copy of this letter should accompany the Association's future application for authorisation. The cover letter to the application should mention that a letter from the ACCC regarding a fee waiver is enclosed with the application. The application together with this letter will be placed on the public register at that time.

If the application for authorisation is lodged by the Association after 15 January 2012, a full application fee of \$7500 will apply, unless a subsequent request for a fee waiver is made and ultimately approved by the ACCC.

Should you have any queries in relation to this matter, please contact Jaime Martin on (03) 9290 1477 (or at jaime.martin@accc.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Dr Richard Chadwick', with a long horizontal stroke extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would 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)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)
Queensland Chicken Growers Association Incorporated
- (b) Short description of business carried on by applicant:
(Refer to direction 3)
Industry representative body for contract meat chicken growers in Queensland
- (c) Address in Australia for service of documents on the applicant:
Queensland Chicken Growers Association Inc
Level 6/183 North Quay, Brisbane, Queensland. 4001
Postal address: PO Box 12009, Brisbane, Queensland. 4003

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

Please refer to Annexure A

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

Please refer to Annexure A

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:
Meat chicken growing services
- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Please refer to Annexure B

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Inghams Enterprises Pty Ltd
Locked Bag 4000
Liverpool NSW BC 1871

Baiada Poultry Pty Ltd
642 Great Western Highway
Pendle Hill NSW 2145

Golden Cockerel
1483 Mt Cotton Rd
Mt Cotton Qld 4165
PO Box 142 Cleveland Qld 4163
And through their farming operations,
Darwalla Milling
Darwalla Rd, Mt Cotton 4165
Woodlands Enterprises Pty Ltd
206 Pine Camp Rd, Beerwah Qld 4519

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Please Refer Annexure C

4. Public benefit claims

- (a) Arguments in support of authorisation:
(Refer to direction 6)

Please see Annexure D

- (b) Facts and evidence relied upon in support of these claims:

Please refer to Annexure D

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 7)

Please refer to Annexure E

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

Please refer to Annexure F

- (b) Facts and evidence relevant to these detriments:

Please refer to Annexure F

7. Contract, arrangements or understandings in similar terms

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

- (a) Is this application to be so expressed?

No

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

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

Not Applicable

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not Applicable

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not Applicable

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No

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

No

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

No

9. Further information

(a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Gary Sansom

82 Hawkins Rd


Stockleigh Queensland 4280

Telephone; 0428 155 795

Email sanfield2@bigpond.com

Dated..5th November 2012

Signed by/on behalf of the applicant



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(Signature)

Jodie Redcliffe

(Full Name)

President

(Position in Organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

ANNEXURE A

2. (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)
- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

The applicant seeks authorisation on behalf of its members (including both present and future members) who provide chicken growing services to the target companies listed in 3(a) to be able to negotiate collectively with the target companies:

- (i) growing fees
- (ii) terms and conditions of meat chicken growing contracts including
 - (1) tenure and renewal terms.
 - (2) obligation and responsibility of both parties.
 - (3) dispute resolution.
 - (4) templates for the calculation of growing fees.
 - (5) Pool systems based on the growers performance.
- (iii) adjustment and review of growing fees and other matters arising from time to time under the terms of meat chicken growing contracts; and
- (iv) resolution of disputes which may arise from time to time under meat chicken growing contracts.

The applicant also seeks authorisation to give effect to agreements collectively negotiated with regards to sub paragraphs (i), (ii) and (iii) above.

In relation to dispute resolution under the legislated authorisation currently in place in Queensland there are basically three steps

- (i) A contracted grower notifies their grower representative that a dispute has arisen – often about matters relating to the pool system and their payment.

- (ii) If a negotiation between the grower, grower representative and the company is unsuccessful then the grower has the opportunity to take the dispute to the Chicken Meat Industry Committee (CMIC). The CMIC has the power to first refer it to mediation and if this is unsuccessful to arbitration with both parties bearing their own costs unless otherwise determined by the arbitrator.
- (iii) This process can only apply to moneys owed and not to fee or contract negotiations unless both parties agree.
- (iv) This process is also reflected in some current contracts.

We would be hopeful that a similar process of dealing with disputes might be included in all Queensland contracts. The dispute resolution process is spelled out in the Code of Conduct for Negotiating groups which is attached in **Annexure G**. It should be noted Clause 13 in the Code is not applicable to the new arrangements.

In more general terms the existing Code will provide a template for the future conduct of the negotiating groups and may be modified as necessary to accommodate current circumstances.

Growers will be free to either be part of a negotiating group for a processor or to opt out and deal individually with the processor.

In accordance with this application all members of a negotiating group must be members of the Queensland Chicken Growers Association.

We would expect that any new grower ie. a person or company who has either bought an existing farm or developed a new farm, would be free to choose whether they wished to be opted in or out.

Choosing to be opted out would not necessarily preclude a grower from being a member of the Association.

It should also be noted that this applicant does not seek authorisation for boycott provisions.

Current Legislative arrangements

The Queensland Chicken Meat Industry Committee Act and regulations was first enacted in 1976. It was originally charged with the responsibility of setting fees and approving contracts.

There was a review of the legislation in 1999 under the requirements of the National Competition Policy (NCP) and as a result there were significant changes made to the operation of the Committee.

The revised Act provided authorisation for the introduction of negotiating groups. The committee was restricted to dealing with disputes, maintaining a register of contracts and overseeing in a general sense the operation of the negotiating groups.

A Code of Conduct for Negotiating groups was developed to provide guidance to the groups.

Under this arrangement there are currently three negotiating groups operating;

Inghams – growers contracted to this processor

Baiada – growers contracted to this processor

Golden Cockerel/Darwalla Milling – growers contracted to this group

Golden Cockerel/Woodlands Enterprises - there are currently no growers contracted to this group.

Two separate reviews of the legislation were conducted in 2009/10.

One review (the Webb/Weller review) was a review of all statutory committees. Its' recommendation was that the CMIC committee should be replaced with a non-statutory body.

A review of the CMIC Act was also commenced as required every ten years under the National Competition Policy to ensure the public benefits of the authorisation still outweighed any public detriment. This review recommended that the authorisation should be renewed as it passed the Public Benefit Test.

The government of the day then decided that the Act would continue, with the committee being replaced by an ASIC registered entity.

Before this new piece of legislation could progress through Parliament a State election resulted in a change of government. Following discussions with the industry, the new government passed a new regulation that reinstated the statutory CMIC committee. This will apply for a period of 12 months to allow the industry to decide how best to proceed.

The members of the Queensland Chicken Growers Association have voted in support of an Authorisation from ACCC and hence directed the Executive of the Association to make this application to the ACCC. The processors have also expressed in principle support for this application.

The industry in Queensland has been operating within the negotiating group structure for about 12 years and keeping within the terms of the Code of Conduct for Negotiating Groups. The grower representatives for a particular processor group are elected by the other Association members of that group. There are no common advisors.

ANNEXURE B

2. (d) *The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation.*

The application is for a period of ten years. Most meat chicken growing contracts are currently 5+5 years although current Ingham's contracts in Queensland for the majority of growers are for a 2 year initial term reverting to a one year rolling contract. Ingham's contracts in Queensland are currently being renegotiated as part of a move to national contracts.

The present structural issues in the industry are long term and unlikely to change. There have been arrangements in place in most states for 30 years or more in terms of legislation to exempt anti-competitive behaviour under the Trade Practices Act and now the Competition and Consumer Act. There have now been a number of authorisations granted by the ACCC in relation to the chicken meat industry.

Given the long term commitments that growers must make particularly with regards to financing and pressure from banks for longer term contracts it is believed that it would be preferable to have a ten year term.

ANNEXURE C

Names of grower members and address details etc.

Registered Name	ADDRESS	City	State	Postcode
Gainlane Pty Ltd		REDLAND BAY	QLD	4165
RW & RG Barrett		REDLAND BAY	QLD	4165
Jim & Elizabeth Bergin		THORNLANDS	QLD	4164
Malabar Holdings Pty Ltd		JIMBOOMBA	QLD	4280
BM Carr Holding P/L		WAMURAN	QLD	4512
Clive & Erica Clark		BLenheim	QLD	4341
AR & DM Clatworthy Pty Ltd		THORNLANDS	QLD	4164
Kelso Rural		JIMBOOMBA	QLD	4280
G & J Cook		REDLAND BAY	QLD	4165
Wandarri Farming		GLASSHOUSE MTNS	QLD	4518
Ken & Tracey Davis		BEAUDESERT	QLD	4285
Sivad Pty Ltd		TOORBUL	QLD	4510
Mundray Pty Ltd		RATHDOWNEY	QLD	4287
Aqua Holdings		MAREEBA	QLD	4880
Michael & Ron Duke		LARVALE	QLD	4285
Jemindy		MAREEBA	QLD	4880
Wishbone Pty Ltd		GLASSHOUSE MTNS	QLD	4518
EG & JB Herbert		MUNRUBEN	QLD	4125
Villella		ROCKY CREEK	QLD	4872
Glenvale Poultry		VICTORIA POINT	QLD	4165
Buandah Enterprises		STOCKLEIGH	QLD	4280
North Walsh Enterprises		MAREEBA	QLD	4880
Jim & Ellen Logan		BEAUDESERT	QLD	4285
Bremer Pastoral Company P/L		LOWER MT WALKER	QLD	4340
Belmont Farm		GLASSHOUSE MTNS	QLD	4518
T & G Poultry		TAMBORINE VILLAGE	QLD	4270
Merlin Holdings Pty Ltd		NORTH MACLEAN	QLD	4280
Matarazzo Family Trust		REDLAND BAY	QLD	4165
Fat Hen Pty Ltd		HARRISVILLE	QLD	4307

J & N Myrteza		MAREEBA	QLD	4880
OSZ		MAREEBA	QLD	4880
Woolthorpe Grazing Company		PEAK CROSSING	QLD	4306
Verne & Elaine Nitschke		PARK RIDGE	QLD	4125
Monarch Nominees Pty Ltd		BURBANK	QLD	4156
Jaystin Pty Ltd		LITTLE MOUNTAIN	QLD	4551
Jaystin Pty Ltd		BEERBURRUM	QLD	4517
Jaystin Pty Ltd		ELIMBAH	QLD	4516
S.M. Pegler		MUTDAPILLY	QLD	4307
E Plaisted		REDLAND BAY	QLD	4165
P Plaisted		LOGAN RESERVE	QLD	4114
Allop Pty Ltd atf The Alan Porter Family Trust		CHAMBERS FLAT	QLD	4133
J Quinlan		PARK RIDGE	QLD	4125
Chanticlear Pty Ltd		WAMURAN	QLD	4512
Remington Rural P/L		CAPALABA WEST	QLD	4157
Repstar		MAREEBA	QLD	4880
Gid & Annette Romaior		WALKAMIN	QLD	4872
Gary & Julie Sansom		JIMBOOMBA	QLD	4280
Singh's Enterprises Pty Ltd		GLENEAGLE	QLD	4285
Nyrrad Investments Pty Ltd		COOMINYA	QLD	4311
Tinamba Poultry		BEAUDESERT	QLD	4285
B & J Takhar		THORNLANDS	QLD	4164
Steve & Colleen Teitzel		PARK RIDGE	QLD	4125
Aungooska Farm Pty Ltd		MAREEBA	QLD	4880
Tongallery P/L as Trustee for the J Tully Family Trust		ESK	QLD	4312
Tongallery P/L as Trustee for the J Tully Family Trust		BEAUDESERT	QLD	4285
Kajax Pty Ltd		ALLENVIEW	QLD	4285
M Vandenbrink		KALBAR	QLD	4309
Mark & Lorraine Zammit		CABOOLTURE	QLD	4510

ANNEXURE D

Public Benefit

The review of the 1976 Chicken Meat Industry Committee Act in 1989-99 recommended the establishment of negotiating groups for each of the processors in Queensland with contract growers to negotiate contracts and grow fees. The review found there were significant transaction costs associated with individual negotiations.

The role of the Committee was changed significantly to provide support for the negotiating groups and dispute resolution.

The committee also endorsed a Code of Conduct for the negotiating groups to operate under.

This arrangement has operated for the last 12 or so years without apparent impact on the consumer and a significant increase in investment in both processing facilities and new shedding.

The Act was reviewed in 2009 and it was found to have no public detriment. It was recommended that the legislated authorisation should be continued (See item below 2.4 Conclusion reproduced from the report).

What the Queensland Chicken Growers Association is now seeking is an authorisation from the Australian Consumer and Competition Commission which will allow the continuation of collective negotiation by negotiating groups. This will then allow us to inform the Government that they can subsequently repeal the existing legislation.

Similar arrangements have been authorised in South Australia, Victoria and Western Australia.

Summary of PBT test from the Queensland Treasury review of the existing legislation.

2.4 Conclusion—assessment of with and without cases

The key characteristic of the industry is the imbalance in bargaining power in favour of chicken meat processors over growers. This imbalance is further magnified because the growers are only suppliers of a growing service and have little influence in the supply chain. Growers are vulnerable because they have invested in significant assets that cannot easily be used for purposes other than chicken growing.

If the imbalance in bargaining powers between processes and growers is left unaddressed, there will be a high risk of industry instability and of prolonged and costly legal disputes in the future. Collective bargaining

provides an efficient and effective countervailing mechanism to address the imbalance in market powers.

There is a weight of historical evidence indicating that the authorisation for chicken meat growers and processors to collectively negotiate in Queensland has provided an efficient and effective mechanism to address the imbalance in market powers.

There are no negative impacts on consumers when the chicken meat industry operates with an authorisation to collectively negotiate. Any increase in grower fees that may arise as a result of collective negotiations is outweighed by the efficiency gains in having collective negotiations. These efficiencies result from reduced transaction costs and reduced likelihood of disputes.

There is no evidence of any detriment to consumer choice arising from collective bargaining between chicken meat growers and processors.

In Queensland, a move to a situation without authorisation to collectively bargain would increase costs for the chicken meat industry, in addition, there would be greater uncertainty for contract growers, which would reduce the incentive to expand and innovate.

There is no public detriment associated with authorised collective bargaining in the chicken meat industry in Queensland.

Public benefits (reproduced in part from the South Australian Ingham's Growers application)

Collective bargaining is likely to increase grower bargaining power with increased grower input into contract terms and conditions, the alternative in practice being processor mandated terms and conditions in processors' standard contracts. In Victoria since authorisation the experience has been that in two cases processors have been prepared to negotiate entirely new contract documents with the grower group. In other cases in Victoria growers have managed to secure significant modifications to the processor's standard document.

Improved bargaining power has the capacity to give growers security and stability, which in turn encourages further investment in growers' businesses. In particular, investment in additional shedding appears to be a very important requirement of the industry going forward, given the continuing growth of the industry and the demand for more shedding to support this growth. The cost of new shedding is now so great that neither existing participants nor potential new entrants will make the very significant investment required without a contract term which will enable the cost to be amortised, and a payment structure which will enable borrowings to be serviced and ensure an appropriate return. More importantly, banks and other financiers are subjecting contract

arrangements to much more stringent security than in the past before committing to provide finance.

Individual growers are at a disadvantage in negotiations with processors because processors have far greater access to relevant industry and market information. It is also the case that many growers have limited understanding of contractual documentation and their level of negotiation skill is low. Collective negotiation by growers is likely to be far more informed in all respects.

Collective negotiation, as against an individually negotiated contract provides considerable savings for both processors and growers with respect to transactional and administration costs. Individual payment terms mean that the processor must not only separately negotiate these terms when the contract was put in place, but has to conduct separate fee reviews on a regular basis with growers during the term of the contract. From an ongoing administrative point of view if individual payment terms apply, there are separate calculations for each payment made to growers. From the gross perspective there are clear cost advantages in sharing with a number of other growers the cost of a single negotiation.

It is submitted that from an industry perspective collective bargaining by grower groups leads to greater variety in contract terms. Experience in Victoria has been that while authorisation was obtained by the Victorian Farmers Federation on behalf of each of the processor grower groups, each group has gone its own way and negotiated entirely individual terms and conditions. In two cases this has been from the ground up as against merely securing some modification to the processor's standard contract. Historically it has not just been the case that processor standard contract terms apply to all growers contracted to the processor. Standardisation has on occasion spread across more than one processor group, where one processor has borrowed the standard form of contract of another, and adopted it as its own standard contract. This has occurred in both Victoria and South Australia

It is submitted there will be clearly identifiable public benefits from collective negotiation if authorisation is granted and that there are no clear public detriments. The appropriateness of authorisation in virtually identical circumstances in this industry has previously been recognised on a number of occasions.

ANNEXURE E

National Market Characteristics

During the last decade there has been significant consolidation ownership in the processing sector. This has put 63% of total market share in the hands of the industry's two largest processors, Baiada Poultry and Inghams Enterprises. Consequently, industry ownership is highly concentrated at the processing sector level.

The process of consolidation saw Bartters Holdings acquire 50% of Steggles from Goodman Fielder in 1999; in 2006, Bartter obtained the remaining 50% from OSI International foods. Also in 2006, Baiada successfully acquired Marven poultry and Eatmore Poultry.

In July 2009, Baiada (the third largest industry player at the time) acquired Bartters Holdings (the second largest). This acquisition resulted in Baiada becoming the largest industry processor, a position previously held by Inghams. However, the Australian Competition and Consumer Commission (ACCC) imposed a condition on the Baiada acquisition. This was that it excluded Bartter's Victorian processing operations, and these were acquired by La Ionica.

The ownership concentration of the largest processors in the industry suggests that considerable market power resides with these major industry players and that therefore they have considerable bargaining power relative to contract meat chicken growers.

Baiada and Inghams are national processors with operations in New South Wales, Queensland, Victoria, South Australia and Western Australia, and Inghams have an operation in Tasmania. Together they produce more than 80% of Australia's chicken meat. National processors are able to source product from other regions if required.

The chicken meat industry is an excellent example of vertical integration. The processor business involves more than owning a processing plant. It involves hatcheries being close enough to deliver day-old chicks to grower farms, and slaughter-weight chickens must be delivered from the farms to the processing plant. Processors provide all the feed inputs and veterinary supplies needed in the growing process and they own the chickens. In contrast, contract growers own the farms and provide the labour, poultry houses, utilities and management skills for chicken growing.

In contrast to the market for chicken meat, which is national, the market for contract grower services is normally limited to a specific geographic location. Further, at the individual operator level, contract growers are

effectively tied to one processor at a time, or at least for the life of the contract.

Ideally, grower regions should be close to processing facilities. This will;

- limit transport costs (e.g. transporting chicks from the hatcheries to the farms, feed from the mills to the farms and mature meat chickens from the farms to the processing facilities).
- facilitate the management of logistics/turnaround times for picking up and processing the meat chickens
- help meet animal welfare requirements in relation to the transport of live birds.

The Australian chicken meat industry may be best classified as comprising many separate regional monopolies. A monoponyl is a market characterised by a large number of sellers (ie chicken growers) selling to a single buyer (ie the processor company to which the growers are contract to provide 'growing' services).

The total investment by contract growers in Australia is estimated at about 40% of total industry investment. However, individual contract chicken growers do not have the financial resources of the major processor businesses, as they are predominantly family-owned and family-operated businesses.

Capital costs in the industry are high. The establishment cost for a chicken meat processing plant is about \$50-\$60million. The establishment of a tunnel ventilated growing shed with an annual throughput of 200,000 birds may cost up to \$600,000, not including land costs. Chicken growers who have invested in three to five sheds may need a long-term commercial relationship with the processor to meet their financial obligations, and such a period would exceed the term of a typical grower–processor agreement.

In 2009, the national annual per capita consumption of poultry meat was 37.4 kg. In 2010/11 consumption exceeded 40 kilograms per head. This consumption was greater than consumption of any other meat protein. Comparatively high per capita consumption is associated with a high and consistent quality and low price. Over the last decade there has been a decrease in the real price paid by consumers for chicken meat.

Queensland market characteristics

Market characteristics of the Queensland chicken processing operations and contract growers services sector are virtually identical to those of the national chicken meat industry.

Ownership of Queensland's chicken meat processing sector is also highly concentrated. In Queensland there are just three major processing companies: Inghams, Baiada and Golden Cockerel (comprising Darwalla Milling Co. and Woodlands Enterprises). These are located in south-eastern Queensland. Baiada also has a processing plant and contract farms in and around Mareeba in Far North Queensland.

Golden Cockerel has relied mainly on company farms and as such has not been a significant user of contract grower services. This has changed a little in recent years with the company contracting farms in Northern NSW as result of Sunnybrand Chickens losing market share. Sunnybrand was subsequently bought out by Inghams Enterprises in 2011 and Inghams contracted the remaining growers.

About 93 chicken growing farms supply Queensland's chicken meat processors (mainly Inghams and Baiada). Growers provide services to one processor at a time and are bound by contract. They operate in a monopoly market environment. Each processor is generally buying growers services from many growers at the same time, but individual growers are tied by contract to trading with only one processor.

Competition amongst processors for the acquisition of chicken grower services is limited in Queensland.

Processors are able to increase growing capacity in the following ways:

- borrow or inherit growers from another processor who has or is about to lose a customer contract, or trade with other processors for live and processed meat chickens.
- Reallocate inputs from the supply of one customer segment to another.
- Arrange for growers to increase the shedding on their existing farms.
- Engage new growers and farms.

An important characteristic of the market for contracting growing services is that there are very limited examples of growers changing processors or processors enticing growers to switch processors.

Growers are unlikely to switch from one processor to another until their contract has expired. This implies that there is a higher level of financial risk for growers than there is for processors in terms of holding and renewing contracts. Simply put, growers have limited opportunity to switch or sell their services to a different processor.

The nature of chicken farm infrastructure and its specific purpose constrains growers from exiting the grower services sector and using their farm assets in alternative agricultural services.

These constraints allow growers little flexibility to bargain on terms and conditions of agreements with their processor. In contrast, the major processor operations have many suppliers of grower services and therefore an ability to vary their demand for individual grower services.

In Queensland, there has been significant capital investment by processors in processing capacity and new technology. For example, in 2008 Inghams invested around \$50-60 million in building a new plant at Murrarie to increase production and improve product quality. It directly created 210 new jobs.

Excessive use of processor bargaining power does not generally occur in Queensland. The current CMIC Act requires that there be written agreements for the receipt of meat chickens in Queensland; this promotes responsible corporate behaviour. Also there is now a long history of growers and processors working under the collective bargaining process, which provides a countervailing measure.

Under the CMIC Act contract chicken meat growers may collectively negotiate with processors on the terms and conditions of growing contracts or they may opt out of collective arrangements to undertake negotiations with processors on an individual basis. In addition, negotiating groups operate independently of each other, and are aligned to the processor they supply.

It is generally believed that the same CMIC Act, including the collective-negotiation arrangements, has facilitated a higher level of independence and goodwill between growers and processors. The evidence for this is the stability and growth in the Queensland industry.

Over the last 10 years, the poultry meat industry has grown at a rate of around 7% per annum. This rate of growth is predicted to continue over the next 10 years, based on continued population growth and consumer preference.

It is estimated that to supply this forecast growth in demand for chicken meat, about 11 new sheds (or 2 new farms) will be needed in Queensland.

The last CMIC Act review concluded that the growing cost represented 21% of live bird meat cost and 14% of total delivered meat costs. This was found to be equivalent to around 10% of the retail price of chicken meat. Therefore, the restrictive impact of collective bargaining over processor-grower agreements on the retail price of chicken meat would be minimal.

Summary

There has been increasing concentration of ownership by chicken meat processors in the national market. The ACCC has put conditions on recent corporate mergers.

The large chicken meat processors operate in a national market.

Contract chicken meat growers are physically constrained to smaller regions and do not influence the national market for chicken. The market chicken growing services is a monopsony.

Very few chicken meat growers switch between processors.

(Reproduced in part from the Queensland Treasury Review document)

ANNEXURE F

Public detriments

It is possible that collective bargaining may lead to growing fees being higher than if contracts were individually negotiated by growers. It is submitted that collective bargaining is not likely to significantly impact on processor costs. With or without collective bargaining the balance of bargaining power remains with the large national processors dealing with growers who have no available alternatives. The chicken meat industry in Australia has a history of collective bargaining by growers, in one form or another under state statutory systems, and more recently under authorisations. It is difficult to identify links to excessive increases in growing fees.

The way in which the wholesale chicken meat market operates, with its focus on pricing and the relatively small component of retail price constituted by growing fees make it unlikely that the consumer will be impacted, even if collective bargaining does put upward pressure on growing fees.

It may be said that collective bargaining will result in uniform contract terms without opportunity for individual variations to be negotiated. The manner in which the integrated processors operate dictates that the growing contracts will be for the most part uniform and the alternative to collectively bargained contracts appears to be processor-mandated standard contracts.

There is no basis for any suggestion of a single negotiation and transfer of information between the different negotiating groups as a result of the applicant being the Queensland Chicken Growers Association (QCGA). QCGA is not involved in contract negotiations for any of the existing negotiating groups in Queensland. Negotiations are conducted entirely by growers and QCGA provides only administrative support to the groups.

There appears to be no likelihood that collective bargaining will impact on the market for growing services, given the structure of the industry and that growers are tightly bound to particular processors. In fact it is difficult to identify any competition which is or is likely to be reduced by the proposed collective negotiations.

The current arrangements, which are very similar to the arrangement by authorisation is being sought, have had no apparent public detriment. There should be no reason to assume that the new arrangements will have any difference in impact.

Annexure G

THE CODE OF PRACTICE FOR THE OPERATION OF PROCESSOR AND GROWER NEGOTIATING GROUPS

This code of practice is a guideline for the procedures for the operation of processor and grower negotiating groups,

1. Composition of the Group

- 1.1 Grower Representatives - The number of grower members will be determined by the Committee having regard to the size of the group, but shall not normally be less than two (2) nor more than four (4).
- 1.2 Processor Representatives – The number and selection of processor members will be determined by the processor but shall not exceed the number of grower members.

2. Appointment of Representatives

- 2.1 The processor and the contract grower agree that, if the contract grower elects to be a participating member of the negotiating group he shall have the right to appoint growers contracted to the processor as Grower Representatives to negotiate terms and conditions of this Agreement and any matters arising there from;
- 2.2 Growers shall negotiate collectively with the Processor through the elected Grower Representatives pursuant to Clause 2.1 providing at least fifty percent of growers contracted to the processor determined by written advice to the CMIC elect to negotiate collectively and appoint Grower Representatives.

If at least fifty percent of grower!> do not elect for collective negotiation then all negotiations between the processor and its growers will be on a one to one basis;

- 2.3 Nothing shall prohibit the contract grower or the processor from discussing the terms and conditions of the Agreement or any matter arising there from between themselves at any time;
- 2.4 Subject to Clause 2.2 a grower shall be deemed to be represented pursuant to Clause 2.1 unless he elects in writing not to be represented in which case the provision of this Code will not apply to that grower who shall become a non-participating grower. Each grower will be provided with an advice requiring him to notify the processor and the CMIC whether he is to be represented pursuant to Clause 2.2 or individually pursuant to this Clause 2.5.

3. *Election of Grower Representatives*

- 3.1 Grower members shall be selected on the basis of a secret ballot of eligible growers (being growers contracted to the processor) to be conducted annually so that new representatives will take up their position prior to the expiry of the term.
- 3.2 The ballot shall be convened and conducted by the Committee or by an independent body or individual appointed by the Committee.
- 3.3 All participating growers 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.
- 3.4 The ballot shall be decided by a count of votes that takes preference into account.
- 3.5 A casual vacancy among grower members may be filled by appointment by the surviving grower representatives, until such time as a general ballot of all grower members is called.

4. *Functions of the Group*

- 4.1 To negotiate the terms and condition of the Growing Contract to be utilised by that group including the operation of pooling and other joint incentive arrangements to be used for that group.
- 4.2 To negotiate the fees to be paid to growers and the procedures for the regular review of such fees.
- 4.3 To negotiate changes to operational procedures desired by either the growers or the processors and, where appropriate, to negotiate financial consideration for such changes.
- 4.4 To act as a mediatory body for the resolution of disputes between individual growers and the processor.
- 4.5 Nothing shall prohibit the contract grower or processor from discussing the terms and conditions of the Agreement or any matter arising there from between themselves at any time.

The Negotiating Grower Group may negotiate contract terms and conditions for a group of growers. Such agreement may be notified to all growers and shall not, in the case of an individual grower, be subject to Sections 6 and 8 of the Code and in the case of a group of growers, shall be subject to Sections 6 and 8 of the Code by the relevant grower groups.

5. *Meetings of the Group (Grower/Processor Representatives)*

- 5.1 Meetings shall be held as required. A meeting will be convened if requested by either the processor or by no less than 50% of the grower representatives.
- 5.2 Quorum - No less than 66% of the grower representatives and one processor representative shall constitute a quorum.

- 5.3 Matters can only be agreed if the processor representatives and no less than 66% of the grower representatives agree.
- 5.4 In carrying out its functions, the group:
 - (a) May take such action and obtain such information as in its opinion is necessary for that purpose;
 - (b) May, at the request of either grower or processor representatives invite a person who in their opinion is qualified to do so to, furnish to it advice on any matter to a meeting of the group.

6. *Agreed Resolutions of the Group - Matters Relating to All Growers*

- 6.1 An agreed resolution of the group shall be notified to all growers at a joint meeting held for that purpose or other agreed process. (eg. Mail)
- 6.2 The resolution shall be put to a secret ballot of all growers in attendance at the meeting or by postal ballot.
- 6.3 If the resolution is approved by a majority of no less than 66% of growers in attendance the resolution shall be binding on all growers.
- 6.4 If a resolution is not approved as in 6.3 above, the meeting shall determine by a simple majority on a show of hands whether the matter shall be referred back to the group for further negotiation or be determined in accordance with Clause 10.

7. *Agreed Resolutions of the Group – Matters Relating to an Individual Grower*

- 7.1 The agreed resolution of the group shall be notified to the grower.
- 7.2 The grower shall, within fourteen (14) days, notify the group as to whether he accepts the resolution of the Committee or wishes to resolve the matter in accordance with the terms of his growing agreement.

8. *Matters Not Resolved by the Group- Matters Relating to all Growers*

- 8.1 The issue in dispute shall be notified to all growers at a joint meeting held for that purpose.
- 8.2 The processor and grower members of the group shall outline their position on the issues in dispute.
- 8.3 After consideration by the meeting, the processor may request that the issue be resolved. by secret ballot.
- 8.4 If the processors resolution is approved by a majority of no less than 66% of the growers in attendance the resolution shall be binding on all parties.
- 8.5 If a resolution is not approved as in 8.4 above the issue shall be determined in accordance with Clause 10.

9. *Matters Not Resolved by the Group. - Matters Relative to an Individual Grower*

- 9.1 The group shall notify the grower that is has failed to reach an agreement on an resolution to the dispute.
- 9.2 The grower may then resolve the matter in accordance with the relevant provisions of his growing agreement.(Dispute resolution)

10. *Disputes / Mediation*

- 10.1 If during the period of the agreement (other than in respect to breach, default or termination of the agreement by one or other of the parties unless the parties otherwise agree) either party is in dispute or shall be aggrieved by any act or omission of the other in relation to the performance and observation of the conditions of the agreement or by any other matter or thing arising from any such conditions, the application, the meaning or interpretation of the agreement (other than in respect to the rate of remuneration payable such disputes being resolved pursuant to Clause 10.2) the aggrieved party will by notice in writing promptly notify the other party and the parties will seek to resolve the dispute:-
 - (i) by discussion and conciliation through the appointed Grower Delegates in accordance with the Code of Practice;
 - (ii) If the parties fail to resolve their dispute by negotiation within ninety (90) days after receipt of the notice referred to in Sub-Clause 10.1 both parties agree to endeavour to settle the dispute by mediation through the Chicken Meat Industry Committee or an external mediator agreed to by the parties or appointed by the CMIC;
 - (iii) If the dispute has not been resolved within an agreed period of time or failing agreement within twenty-eight (28) days after lodgement of the dispute with the Committee, then the dispute is to be referred to arbitration. The arbitration must be conducted in accordance with the requirements of the Queensland Arbitration Act.
- 10.2
 - (i) If a dispute arises out of or relates to this agreement in relation to the rate of remuneration payable, validity or subject matter thereof the parties agree to first endeavour to settle the dispute, if applicable, by discussion and conciliation through the appointed Grower Delegates in accordance with the Code of Practice and failing agreement by mediation through the Chicken Meat Industry Committee or an external mediator agreed to by the parties or appointed by the CMIC;

- (ii) In the event that the dispute has not been settled (within twenty eight (28) days or such period as agreed to in writing between the parties hereto) after the appointment of the mediator the dispute shall be submitted to external arbitration;
 - (iii) The parties agree to accept the determinate of the arbitrator as final and binding. The arbitrator shall be a person agreed between the parties. Failing agreement the arbitrator shall be a person appointed by the PMIC. The mediator shall not be the same person as the arbitrator.
 - (iv) The costs incurred in mediation and or arbitration to be determined by the mediator and or arbitrator.
- 10.3 If at the end of the contract period the parties have indicated their intent to enter into new contracts subject to satisfactory negotiation then if issues arising from those negotiations have not been resolved in 90 days through the procedures in Clauses 6 and 8 the Processor and Grower Representatives agree to endeavour to settle the dispute by mediation through the Chicken Meat Industry Committee or an external mediator agreed to by the parties or appointed by the CMIC or if both parties agree such a dispute can be resolved by arbitration.

11. Meetings of Growers

- 11.1 The grower representatives may meet as and when required on their own or with participating growers contracted to the processor with advisers representing the interest of growers to discuss issues and recommendations pertaining to the grower group.

12. Non Participating Growers

- 12.1 A grower may, upon cancelling his existing agreement, withdraw from the arrangements provided by the Code and become a non-participating grower. A grower shall be deemed to be a participating grower unless he elects in writing not to be represented collectively.
- 12.2 A non-participating grower may negotiate directly with the processor on any matters covered by the Code.
- 12.3 A non-participating grower will not participate in pooling or other collective payments arrangements and his fee will be adjusted for performance on a basis negotiated separately with the processor.
- 12.4 A non-participating grower will not be eligible to participate in ballots convened for the selection of Grower Representatives nor to attend Grower Meetings convened by the Committee,
- 12.5 A non-participating grower may at the expiration of his agreement notify the processor that he is going to be represented as part of the collective arrangements.

12.6 A non-participating grower shall have the same rights as a participating grower in relation to the disputes/mediation procedure (Clause 10) and shall have the right to receive from and refer to material and matters associated with the functions of the Chicken Meat Industry Committee.

13. *Discontinuation – Reinstatement No longer applicable*

13.1 A Negotiating Group will cease its operations should the number of participating growers at any one time not equate to fifty percent (50%) of the total number of growers contracted to the processor.

13.2 A Negotiating Group shall recommence operations should the number of participating growers at any time equate to fifty percent (50%) of the total number of growers contracted to the processor as determined in accordance with this guideline.