



27 March 2014

Dr Richard Chadwick
General Manager,
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 3131
Canberra ACT 2601

Dear Dr Chadwick,

Re NSW Framers Association Poultry Meat Authorisation

Please refer to all our previous correspondence concerning the above submission.

On behalf of the NSW Farmers' Association Contract Poultry Group Committee we have attached our submission for consideration.

We have also attached the approval from the ACCC for the waiving of the application fee.

Lastly we would like to sincerely thank the staff of the ACCC for their time in assisting NSWFA in the preparation and understanding of the submission and authorisation process.

Yours Sincerely

Ray Lee
NSWFA
Poultry Meat Manager



**Australian
Competition &
Consumer
Commission**

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

Contact Officer: Gina D'Ettorre
Contact Phone: 03 9290 1483

21 March 2014

Mr James Mifsud
Chair
NSWFA Contract Poultry Group Committee
PO Box 459
ST LEONARDS NSW 1590

By email: brownj@nswfarmers.org.au
leer@nswfarmers.org.au

Dear Mr Mifsud

Fee waiver request

I refer to your letter received by the Australian Competition and Consumer Commission (ACCC) on 14 March 2014, seeking a fee waiver in respect of a proposed application for authorisation.

In particular, you have requested that the fee to be paid in relation to an application for authorisation to be lodged by the NSW Farmers' Association on behalf of the NSW Farmers' Association Contract Poultry Group Committee be waived in whole.

In support of your request, among other things, you submitted that the NSW Farmers' Association is a not for profit organisation and that the application costs would prevent individual members from applying themselves.

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 NSW Farmers' Association has been waived in whole. No application fee will apply in respect to the application for authorisation to be lodged by the NSW Farmers' Association on behalf of the NSW Farmers' Association Contract Poultry Group Committee.

This decision will remain in force for a period of three months. The three month period will expire on 21 June 2014.

A copy of this letter should accompany the application for authorisation to be lodged by the NSW Farmers' Association. 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 NSW Farmers' Association after 21 June 2014, 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 do not hesitate to contact Gina D'Ettorre on 03 9290 1483.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'R' followed by a long horizontal line.

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)

A91417

NSW Farmers' Association

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

The Applicant is an Australian public company limited by guarantee uniting and representing pastoral and agricultural producers in New South Wales.

Under Article 29 of the NSW Farmers' Association Constitution, specialist commodity sections may be established to represent those members of the Association affiliated with that commodity.

Collectively, the Applicant's poultry growers form the NSW Farmers Association Contract Poultry Group, established under the above article. Historically the Applicant is the industry representative body for contract poultry (meat chicken and turkey) growers in New South Wales and more recently the Association membership has expanded to include duck growers.

Within the Contract Poultry Group the members form what is known as **Common Interest Grower Groups (CIGG)**, according to which processor the grower is contracted to.

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

NSW Farmers' Association Contract Poultry Group
Level 6/35 Chandos Street, St Leonards 2065
Postal: PO Box 459, St Leonards NSW 1590

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)

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

Growing fees

- i. terms and conditions of meat chicken, turkey and duck 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.
- ii. adjustment and review of growing fees and other matters arising from time to time under the terms of meat chicken, turkey and duck growing contracts; and
- iii. resolution of disputes which may arise from time to time under meat chicken, turkey and duck 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 accordance with this application all members of a negotiating group must be members of the NSW Farmers' Association Contract Poultry Group.

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.

We would expect that any new grower i.e. 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 opt out would not necessarily preclude a grower from being a member of the Association. The Association has members that have more than one type of enterprise such as mixed livestock or an enterprise running sheep and undertaking horticulture. However, the Contract Poultry Group is exclusive to poultry meat growers and these members pay a levy as per the Contract Poultry Group's by-laws, which incorporates the general NSW Farmers' Association membership fee.

Repeal of *Poultry Meat Industry Act 1986* (NSW)

Section 9 of the *Poultry Meat Industry Act 1986* (NSW) (The Poultry Meat Act) provides authorisation for any agreements entered into between 2 or more growers, or between 2 or more growers and a processor, in relation to the growing of poultry but not ducks. Given our assumption of the upcoming repeal of the Poultry Meat Act, the Applicant seeks authorisation on behalf of its members to continue to form the above agreements.

The likelihood of the Act's abolition was confirmed to the Association in a recent confidential March 2013 briefing with Department of Primary Industries NSW staff. Notably, the processors that are covered by the Act does not include the current and sole duck processor.

- (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)

Without authorisation under s 88(1), collective bargaining by growers may be considered to be a cartel provision under Div 1, Part IV of the Act in that the grower businesses are acting together rather than competing with each other.

However the context of the poultry meat industry in NSW, in geographical necessities, and growers' heavy reliance on processors, as explained throughout this application, is centred around the balance of power between growers and processors. In order to obtain fair and reasonable poultry growing agreements between processors and growers in NSW, growers must have a mechanism available to prevent abuse of market power by processors.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Meat chicken, turkey and duck growing services within a vertically integrated and highly concentrated poultry meat industry.

- (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 Applicant seeks an arrangement for a ten year term. Most meat chicken and turkey growing contracts are currently five years. Five years is also standard for duck growing contracts although there are a small number of exceptions with 12 month contracts.

Due to the geographical proximity of the growers to their processors, and the associated planning, contracts will span several years. The present structural issues in the industry are long term and unlikely to change. There have been legislative arrangements in place in most states for 30 or more years to exempt anti-competitive behaviour under the now repealed *Trade Practices Act 1974* (Cth) and now the *Competition and Consumer Act 2010* (Cth).

There have also now been a number of authorisations granted by the ACCC in relation to the chicken meat industry in other jurisdictions. The Applicant is also aware that other jurisdictions have been granted a ten year authorisation and wishes to remain consistent with those terms. Given the long term commitments that growers must make particularly with regards to financing and pressure from banks for longer term contracts it is optimal that the applicant be granted a ten year term for authorisation.

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:

Poultry (chicken and turkey) processors (excluding ducks):

Inghams Enterprises Pty Ltd

Locked Bag 4000
LIVERPOOL NSW BC 1871
Contact: Peter Van Vliet
E-mail: pvanvliet@ingham.com.au
Phone: (02) 9602 8744

Baiada Poultry Pty Ltd

642 Great Western Highway
PENDLE HILL NSW 2145
Contact: Simon Camilleri
E-mail: Simon.Camilleri@baiada.com.au
Phone: (02) 9842 1101

Red Lea Chickens Pty Ltd

421 – 427 Flushcombe Road
BLACKTOWN NSW 2148
Contact: Peter Mark
E-mail: peter@redlea.com.au
Phone: (02) 9622 1722

Cordina Chicken Farms Pty Ltd

55 Mundoon Road
GIRRAWEE NSW 2145
Contact: John Cordina
E-mail: john@cordina.com.au
Phone: (02) 9912 1700

Exclusively duck processor:

Pepes Ducks

17 Walker Street

SOUTH WINDSOR NSW 2756

Contact: John Houston

E-mail: johnh@pepes.net.au

Contact: (02) 4577 4233

Description of business: Chicken, turkey and duck processors own and operate breeding farms, hatcheries, feed mills, and processing plants. In terms of the contracts, processors provide the birds, feed, veterinary services, medication and animal husbandry advice, and undertake processing, marketing and distribution.

- (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)

This application is made on behalf of the Applicant's members only. The Applicant's members form **Common Interest Grower Groups** (CIGG) in which they are able to collectively negotiate contract terms according to the grower's contracted processor.

4. Public benefit claims

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

Please refer to Annexure A

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

Please refer to Annexure A, section 2

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 A, section 3

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 A, section 4

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

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)

N/A

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

N/A

- (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:

N/A

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?

N/A

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

N/A

9. Further information


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

Ray Lee
NSW Farmers Association
Contract Poultry Group Manager
Level 6/35 Chandos St

St Leonards NSW 2065
Contact number 0428882178

Dated 27 March 2014.....

Signed by/on behalf of the applicant


.....
(Signature)

Ray Lee.....
(Full Name)

Contract Poultry Group Manager.....
(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

1. NSW industry background

Current legislative provisions

NSW has had some form of regulated “grow-out” contracts since the mid-1970s concerning chicken and turkey meat but not duck meat, during which time the instrument has undergone several reviews. The last major amendments were made in 2005.

For the current iteration of the *Poultry Meat Industry Act 1986* (NSW) (the ‘Poultry Meat Act’) the objectives are:

- To constitute the Poultry Meat Industry Committee (PMIC) and to define its functions;
- To regulate and control the poultry growing industry;
- To repeal the *Chicken Meat Industry Act 1977*; and
- For other purposes

Key features relating to chickens and turkeys

- The Poultry Meat Act provides statutory authority for collective bargaining by poultry growers in their negotiations with poultry processors.
- It establishes arrangements to facilitate individual processors negotiating privately with their group of contract growers.
- Growers also have the freedom to choose whether they wish to participate in collective bargaining with their peers or whether they would prefer to negotiate independently with a processor.
- The Poultry Meat Act applies only to “designated poultry”, defined as chickens and turkeys below certain ages.
- Part 2 of the Poultry Meat Act constitutes the PMIC, which comprises three people independent of the Department of Primary Industries and industry participants. At least one member must be a person skilled in mediation or arbitration. The selection of the members of the PMIC is at the discretion of the Minister for Primary Industries.
- PMIC is required to seek the advice of the Poultry Meat Industry Advisory Group (PMIAG), which is established under Part 2A of the Poultry Meat Act. The PMIAG consists of seven persons appointed by the Minister, the Chair being an independent person nominated by the Minister and the others being three representatives of growers and three representatives of processors.
- Section 19 of the Poultry Meat Act along with section 13 of the Poultry Meat Industry Regulation 2008 (NSW) require processors to notify the Department of Trade and Investment, Regional Infrastructure and Services that they have entered into a contract with a grower. This provision is directly linked to disease incident management. The associated notification fee also provides a stream of revenue to fund the costs of the PMIC and PMIAG.
- Part 5 of the Poultry Meat Act authorises inspectors to search and inspect poultry growing premises for any records relating to the production of batch poultry and for agreements made for doing so for the purpose of ascertaining whether an offence against the Poultry Meat Act or regulations has been committed. This part of the Act provides details regarding the:
 - powers of the inspectors;
 - questions that can be asked by the inspectors;
 - search warrants, and
 - obstruction of the inspectors.

Other than corporate companies there has been little to no new investment in the poultry meat industry. The exception has been in Tamworth and Griffith. In Tamworth a proposed increase in processor investments has resulted in some new shedding, while Griffith has had numerous corporate shedding build in the last 12 months.

Grow fees have not kept pace with investment costs therefore the return on investment can significantly and quickly erode. The reliance placed on processors and the relative minimal influence in the supply chain currently enjoyed by growers, means the ability to collectively negotiate is of prime importance in maintaining fair and reasonable contracts. For example, with the commencement of the RSPCA growing models there are more costs borne by growers, extra work loads and equipment are required to ensure accreditations are maintained. The RSPCA approved (referred to in Annexure C, below) product could retail from upwards of \$10.00 per kilo but the growers would still only receive 67c/bird.

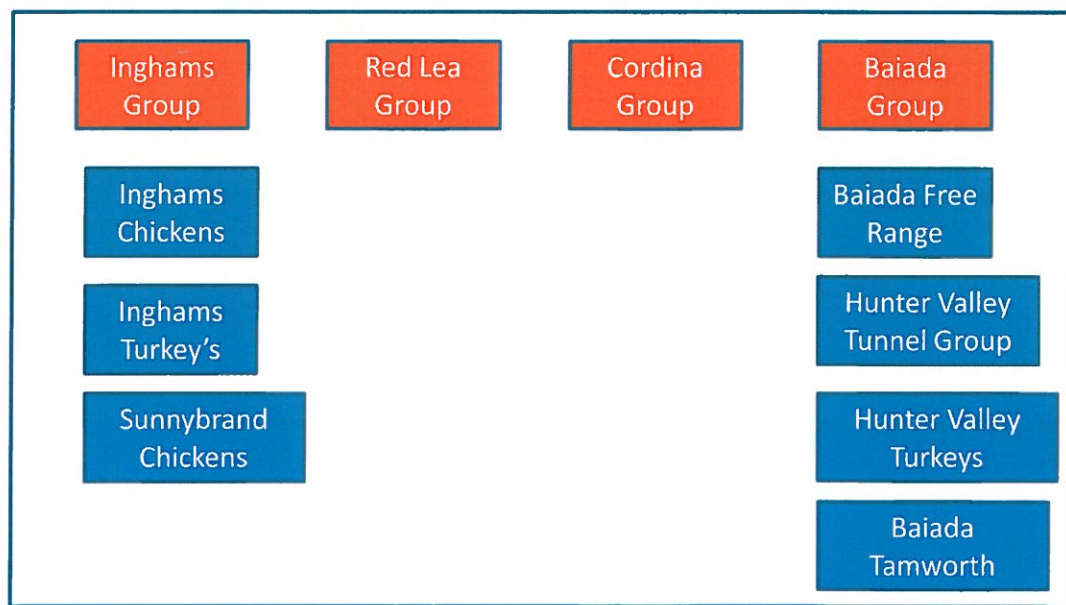
Due to clusters growers are limited to processors who are within 1.5 hours from plant. This is also a animal welfare requirement.

How the NSWFA Contract Poultry Group is formed:

- A chicken meat grower joins NSWFA and registers their interest in joining a contract poultry group
- Groups are formed on a geographical & processor basis
- Each majority contract poultry group elects a delegate
- 9 delegates plus NSWFA President (non voting ex-officio member) form Contract Poultry Group, CPG
- The CPG is a specialist Committee under section 29 of the NSWFA Constitution, operates as its own entity
- CPG provides specialist policy advice to cross sector NSWFA policy committees (e.g. Executive Council, Animal Welfare, Biosecurity)
- CPG members pay a levy that enables the employment of a Poultry Meat Manager

NSWFA contract poultry groups

180 NSWFA chicken grower members



Current situation for duck growers and processors

The meat duck industry is located in only NSW and Victoria and there are only two processors Australia-wide. The one located in NSW, Pepes Ducks, would be a target of this authorisation.

The NSW duck meat industry is not captured by the Poultry Meat Act therefore the ability for duck growers to collectively bargain is limited. However there is just one processor with which all 20 growers negotiate their contracts with. The Applicant has been approached by duck growers, seeking to adopt similar contracting provisions.

No increase in grow fees since May 2011 for ducks. Awaiting authorisation to commence collective bargaining with Pepes.

NSWFA poultry and duck members



265 chicken growers in NSW currently under the Poultry Meat Industry Act
NSW has 18 duck growers and currently under legislation have they have no ability to collectively bargain

2. Public benefit claims

[As per 4 (a) Arguments in support of authorisation: *(Refer to direction 6)*]

Growers are the only suppliers of a poultry growing service in NSW and have little influence in the poultry meat supply chain. The investment required to establish poultry meat growing services significantly increases vulnerability to a processor and to the market. The public benefit derived from addressing the bargaining powers through an authorisation is to achieve more stable and unrefuted contract arrangements, as well as running less risk of disputes arising and costly, lengthy legal

dispute resolution. Collective bargaining provides an opportunity to prevent the result of an imbalance in market influences.

As indicated above, NSW has had some form of regulated 'grow-out' contract arrangements exclusive to chicken and turkey meat since the mid-1970s, with periodic reviews of the legislation which has regulated this industry. Prior to the current review (of the *Poultry Meat Industry Act 1986* (NSW)) underway, the last major amendments to the legislation were made in 2005.

In 2005 the NSW Government indicated the desired outcome of the Act primarily related to ensuring that the contracts between processors and growers are fair and reasonable.

As the NSW Trade & Investment Information Paper for the 2013 review of the Act observed:

The poultry meat industry is vertically integrated and highly concentrated both industrially and geographically. In NSW there are just four main poultry meat processing companies. Processors own and operate breeding farms, hatcheries, feed mills, processing plants and some growing farms. The industry is, however, characterised by having the majority of birds grown under contract on independent farms.

In contract situations, processors provide the birds, feed, veterinary services, medication and animal husbandry advice, and undertake processing, marketing and distribution. The contract growers receive the day-old chicks and grow the birds to market weight, at which point the processor collects the birds and pays the farmer the agreed per bird grow-out fee. The growers provide animal management, capital inputs such as land, housing and equipment, some variable inputs such as bedding, gas and electricity, and are responsible for waste disposal.

*The relationship between processors and growers is one of strong mutual dependence in meeting the needs of the marketplace and balancing meat demand and bird supply. That relationship, particularly as expressed in the grow-out contract, has been regulated in NSW since the mid-1970s, most recently under the *Poultry Meat Industry Act 1986*. The proposition underpinning this intervention has been that contract growers are in a weak bargaining position relative to processors and that statutory protection is required to prevent market power abuse.¹*

The applicant is seeking is an authorisation from the Australian Consumer and Competition Commission which will allow the continuation of collective negotiation by common interest grower groups for chicken and turkey meat growers, as well as incorporating duck meat growers.

Improved Grower Bargaining Power

Currently growers are subject to processor mandated terms and conditions which lean heavily in favour of the processor. For example a grower who exits a contract agreement is prevented from contracting with another processor for 12 months. Another is the requirement preventing sale of a destocked farm for twelve months. In essence the processor must approve any sale of farms.

Just as the Queensland GCGA application observed growers are also 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

¹ NSW Department of Primary Industries 'Review of the *Poultry Meat Industry Act 1986* Information Paper' available at dpi.nsw.gov.au accessed 3 October 2013, page 1.

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.²

In the absence of the Poultry Meat Industry Act, having the ability to legally collectively bargain will address this imbalance. For instance growers within groups can share operating and infrastructure cost information to ensure the grow fee is realistic and keeps pace with the CPI over the life of the contract. They can also collectively negotiate standard payment terms such as method of payment and interval from receipt of goods.

² Queensland Chicken Growers Association Incorporated - Authorisation - A91347
<http://transition.accc.gov.au/content/index.phtml/itemId/1089168/fromItemId/278039/display/application>

Investment in infrastructure

For all of chicken, turkey or duck meat production, there are two types of sheds used in NSW: conventional and 'tunnel'. Very few conventional sheds are being built in favour of tunnel. Construction of the shed and its internal fit out alone would be in the order of \$650,000 for conventional and \$850,000 for tunnel. This price excludes the cost of land, development application fees, and other association costs. Establishment of new facilities takes considerable time and forward planning. Aside from corporate investment, there has been very little new investment in the past four to five years.

Emergence of higher welfare poultry meat

There has been a further development to the poultry meat industry since the Queensland authorisation was granted, the establishment of poultry meat raised and accredited according to higher welfare requirements, such as the "RSPCA approved" Lilydale chickens. While changing the growing conditions has not impacted the processor as the bird is being processed at largely the same shape and size, for the grower it has had significant impacts.

For example within the shed the grower needs to provide activity furniture for the birds to exhibiting scratching, perching and so on. Similarly, litter requirements are different to the former requirements to facilitate dust bathing. These modifications come with different management considerations, meaning more person hours spent inside the shed as part of daily maintenance.

The establishment of these higher welfare brands has seen negotiations only occurring between the RSPCA equivalent, the retailer(s) and processor. The grower who has to undertake all these new practices and therefore bear the costs, have not been able to negotiate a higher growing fee.

Existing shed structure may be flexible enough to enable them to be modified into free range system required for these higher welfare brands but the lower stocking densities will mean more sheds are required. This example illustrates the need for balanced and fair market, and mechanisms to prevent the situation where due to sheer integration the processor and/or retailer are cashing in off growers' weakened bargaining position.

3. Market Definition and Evidence

[As per 5]

Claims made as to the public benefit chiefly relate to the imbalance of bargaining power between growers and processors. Evidence relied upon in such assertions is derived from a variety of sources including:

The NSW Department of Primary Industries³

- The *Poultry Meat Industry Act 1986* (NSW) - The desired outcome of the Act were clarified in public statements made by the Government when the last major amendments were made to the Act in 2005 and primarily relate to ensuring that the contracts between processors and their growers are fair and reasonable
- The poultry meat industry is vertically integrated and highly concentrated both industrially and geographically. In NSW there are just four main poultry meat processing companies.

³ NSW Department of Primary Industries 'Review of the *Poultry Meat Industry Act 1986* Information Paper' available at dpi.nsw.gov.au accessed 3 October 2013, page 1.

- The relationship between processors and growers is one of strong mutual dependence in meeting the needs of the market place and balancing meat demand and bird supply
- That relationship, particularly as expressed in the grow-out contract, has been regulated in NSW since the mid 1970s.
- The proposition underpinning this intervention has been that contract growers are in a weak bargaining position relative to processors and that statutory protection is required to prevent market power abuse.

The Australian Chicken Meat Federation's (ACMF) paper- *The Australian Chicken Meat Industry: An Industry in Profile* observed in 2011

- The chicken meat industry in Australia is vertically integrated
- Well over 95% of the chicken meat grown and eaten in Australia is produced by seven privately owned Australian chicken meat processing companies.
- Farms are located within 100km of a processing plant due to NSW Food Authority and animal welfare requirements. NSW has just four main processing companies- Inghams, Baiada, Red Lea and Cordina.”⁴
- ACMI provides that NSW represents 32.4% of chickens slaughtered in Australia or 34.2% of the volume of chicken meat produced⁵
- The relatively concentrated nature of the industry is balanced by its small direct customer base (i.e. the supermarket chains and major quick service restaurant chains), as chicken is purchased from processors by a small number of major companies with substantial market power. Despite only limited exposure to international trade, the result is a highly competitive domestic market.
- In each chicken producing region, chicken meat processing companies typically locate the various parts of their operations in close proximity to each other. For example each company's hatcheries, broiler farms, processing and further processing (cooking) plants will typically be within a two hour drive of each other.
- Meat chicken growing farms are generally located within 100km of a processing plant.
- Growers need to be near a feed mill, with guaranteed water, power and access for trucks, as well as access to labour and services. The farms themselves are relatively small in area, with 75 per cent of the 765 farms in Australia in 2008–09 under 50ha (ABS, 2010⁶).

4. Public detriments

[As per 6 (a) Detriments to the public resulting or likely to result from the authorisation
(Refer to direction 8)]

Whilst it may be possible to conceive that authorisation for collective bargaining may lead to grow fees being higher than if growers were to individually negotiate with a processor, the latter can encourage a situation of market abuse given that growers have no viable alternative than to contract with a processor. Furthermore, given that the chicken meat industry in NSW has been regulated under

⁴ NSW Department of Primary Industries 'Review of the Poultry Meat Industry Act 1986 Information Paper' available at dpi.nsw.gov.au accessed 3 October 2013, page 1.

⁵ Australian Chicken Meat Federation Inc *The Australian Chicken Meat Industry:*

An Industry in Profile 2011 available via

http://www.chicken.org.au/industryprofile/downloads/The_Australian_Chicken_Meat_Industry_An_Industry_in_Profile.pdf

⁶ ABS, 2010, Agricultural Commodities, Australia 2008–09 (cat. no. 7121.0), sourced from ACMFI above no 5, page 14.

legislative control at the time of the application and previously, there would be no direct public detriment due to the possibility of higher grow fees arising out of the transition to authorisation.

Another potentially perceived public detriment could be a uniformity of rigid contract terms. As stated in the Queensland Chicken Growers' Association⁷ application:

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.

The Applicant submits that the public benefit of balancing the bargaining position between processors and growers to be found in authorisation would outweigh any perception of public detriment such as higher grow fees or rigid contract terms, possibly resulting from the authorisation. In any case, the authorisation will replace the ability to collectively bargain as a consequence of provisions within NSW legislation.

⁷ Queensland Chicken Growers Association Application for Authorisation made by the Queensland Chicken Growers Association Inc ANNEXURE F Available at <http://registers.accc.gov.au/content/index.phtml/itemId/1089168/display/application>