National Farmers Federation

Interim Report

Exploring the potential for a Code of Conduct to increase market transparency and competition in Australian poultry meat supply chains.

December 2023

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Executive summary

Australia's poultry meat supply chain is characterised by significant market concentration.[1] For several decades, there have been ongoing discussions about the impact of this market concentration on market transparency, competition and fair practices. Despite these discussions, there are conflicting positions on the extent to which unfair practices exist in the supply chain and their effect on the effective function of the broader market.

The Australian Consumer and Competition Commission's (ACCC) 2020 Perishable Agricultural Goods Inquiry (PAG Inquiry) highlighted significant concerns about practices in the Australian poultry meat supply chain and the broad impact of these on market transparency, competition and overall economic harm.[2] Following the ACCC's PAG Inquiry, the Department of Agriculture Fisheries and Forestry (DAFF) funded several projects to examine options to increase competition and market transparency in Australia's perishable agriculture goods (PAG) industries.

The National Farmers' Federation (NFF) was funded by DAFF to explore the potential for a Code of Conduct to increase market transparency and competition in Australian poultry meat supply chains. In doing so, the NFF has conducted broad research and stakeholder engagement on competition and market transparency in Australia's poultry meat supply chain.

The NFF has adopted DAFF's broad view of market transparency in conducting this project. Market transparency refers to the availability of information, price and non-price factors in a market, and factors that influence decision-making.

The NFF was pleased to find that all stakeholders share a common vision of future prosperity for Australia's poultry meat supply chain. Growers and processors are fundamentally interlinked, and every one must succeed for the others to succeed. Despite this, there is disagreement from different stakeholders in the poultry meat supply chain about the extent to which market concentration is an issue and the impacts this concentration has on the diverse stakeholders. However, this report's research and stakeholder engagement identified a widespread lack of market transparency, misuse of market power, and economic harm.

As discussed in this report, growers have detailed broad economic harms stemming from market power manipulation and exploitation of a lack of market transparency. These include:

- No alternate processor in their region
- Little to no ability to compare price offerings between processors when there is more than one in a single area.
- A lack of fair negotiation of contracts between processors and growers.
- Deliberate undermining of growers' desire and attempts to collectively bargain.
- The requirement for infrastructure investments to receive a contract with no additional remuneration to reflect the costs of required upgrades
- Contract lengths that do not allow sufficient time to write down debts for assets required to receive the contract.
- Contract price increases that do not adequately reflect increased input costs.
- Refusal to honour clauses within contracts
- A genuine fear of commercial retribution for participating in commercial retribution or accessing rights under the law, such as challenging the use of unfair contract terms or unfair business practices.

The findings of this report closely align with those of the ACCC PAG Inquiry. Both reports have identified that practices occurring in the supply chain are causing economic harm. These practices' presence and ongoing use demonstrate real issues within the Australian poultry meat supply chain. The Australian Government should act to address these economic harms.

[1] Australian Chicken Meat Federation (ACMF), *Our Industry*, 2023, <https://chicken.org.au/our-industry/industry-overview/>.
[2] Australia Competition and Consumer Commission (ACCC), *Perishable agricultural goods inquiry,* November 2020.

This report has considered a range of policy, regulatory and legislative measures the government can adopt to address the poultry meat supply chain issues. As it stands, Australian Consumer Law (ACL) is not an adequate vehicle to address the issues identified in this report. The monopsony power processors have and the real fear of commercial retribution means that growers are unwilling to challenge processor misbehaviour. This leaves minimal opportunity for effective law reform to address these issues effectively.

In this report, the NFF has identified a Mandatory Code of Conduct (a Code) as the only tool the government can adopt to address poultry meat supply chain issues. Administered by the ACCC, a Mandatory Code will provide a regulatory framework that provides confidence and fair trading between all poultry meat supply chain participants.

This report provides a proposed Code for the poultry meat supply chain. This Code has been developed based on the issues identified in this report, similar instruments in other agricultural industries and best-practice regulation frameworks. This proposed Code has undergone robust legal analysis and assessment to ensure a robust, high-quality Code. This analysis has also ensured that the Code effectively addresses issues in the supply chain without creating an excessive burden on stakeholders.

In delivering this project, the NFF has conducted a fair, balanced and thorough process to examine the issues and solutions for Australia's poultry meat supply chain. This report and the proposed Code offer the Australian Government tools and information to implement best-practice policies and regulations to support growers and processors in the supply chain. The NFF looks forward to working with all stakeholders to discuss the findings of this Interim Report and delivering positive action for everyone in the poultry meat supply chain.

Introduction

Australia's poultry meat supply chain is characterised by significant market concentration.[3] For several decades, there have been discussions about the impact of this market concentration on market transparency, competition, and fair practices. Despite these discussions, there are conflicting positions on the extent to which unfair practices exist in the supply chain and their effect on the effective function of the broader market.

Poultry growers (growers) have alleged retrospective price reduction, vilification, abrupt termination of contracts, failure of the processors to competitively engage the most efficient growers, and requirements for continuous farm upgrades without payment. At the same time, processors report no issues within the supply chain functioning effectively.

The Australian Competition and Consumer Commission's (ACCC) Perishable Agricultural Goods (PAG) Inquiry is the most recent study to highlight issues within the poultry meat supply chain.[4] In its 2020 report, the ACCC "established that practices are occurring in PAG industries that cause significant economic harm."[5] As part of the PAG Inquiry, the ACCC made an explicit reference that it "considers that further examination of issues in this industry is required"[6] separate and additional to an ACCC review of standard form contracts between processors and growers that the ACCC had a view contained contract terms previously considered to be unfair in other PAG industries.

In the PAG Inquiry, the ACCC formed the view that practices occur in PAG industries that justify and require a regulatory response.[7] This is due to the harmfulness of the practices that are occurring. This report investigates the potential for a Code of Conduct (a Code) to act as this regulatory response to address harmful practices in the poultry meat supply chain. This report also examines other policy options to increase market transparency and competition in the Australian poultry meat supply chain.

Issues in Australia's poultry meat supply chain aren't unique. Issues raised in the PAG Inquiry and other discussions over many years are similar to those in other agricultural industries, including sugar, horticulture, and, most recently, dairy. The government's response to these other industries has been to institute Codes to provide a set of rules that govern the behaviour of supply chain actors in their interactions. These Codes do not limit competition between growers or between processors but provide a predictable set of rules against which negotiations and contracts can be judged at critical levels within the supply chain.

Government intervention to provide some countervailing power against companies with large market power has not been limited to agriculture, nor have the behaviours that triggered the development of Codes been limited to agriculture. The Electricity, Oil, and news media industries have all required government intervention to ensure the smooth operation of these markets in the face of downstream supply chain consolidation.

However, the challenge is ensuring that any regulation, including a Code, works with an industry. It must be designed to limit unnecessary regulatory burdens and support all supply chain actors to work towards a shared future of prosperity.

ACCC Perishable Agricultural Goods (PAG) Inquiry

In 2020, the ACCC's PAG Inquiry[8] examined the extent to which bargaining power imbalances exist in PAG markets and whether they impact the efficient operation of these markets. The ACCC

[3] Australian Chicken Meat Federation (ACMF), *Our Industry*, 2023, <https://chicken.org.au/our-industry/industry-overview/>.
[4] Australia Competition and Consumer Commission (ACCC), Perishable agricultural goods inquiry, November 2020.
[5] Ibid p 115.
[6] Ibid.
[7] Ibid p 115, 130.
[8] ACCC, Perishable agricultural goods inquiry, November 2020.

considered that all markets studied in the ACCC Inquiry, including poultry meat, have characteristics likely to lead to bargaining power imbalances.[9]

These bargaining power imbalances were based on two key elements within the supply chain. First, the perishability of the product reduces the grower's negotiating position. It increases their vulnerability to take-it-or-leave-it terms from buyers or exploitative conduct. Second, PAG markets are often characterised by many growers but few processors and major retailers. Economies of scale at the processing and retail levels result in market structures where a relatively small number of buyers acquire the majority of produce. Together, these features mean PAG supply chains can be particularly susceptible to market failure in the form of a lack of competition, information asymmetry, and the inappropriate or inefficient allocation of risk.[10]

The PAG Inquiry report identified that ACCC had "received a number of reports of harmful trading practices by processors towards growers", including but not limited to:

- "…the majority of submissions that raised concerns were about the processor-producer relationships in the dairy, poultry meat and horticulture industries."[11] Notably, the dairy and horticulture sectors are now covered by mandatory Codes of Practice.[12]

- "….types of [contract] terms the ACCC has previously considered to be unfair in other PAG industries, such as those allowing unilateral variation to contract factors that can impact price, and unbalanced or short termination timeframes.[13]"

- "…one submission stated that after a major processor exited a region, the remaining processor used the opportunity to require producers to accept a decrease in payment mid-contract despite prices having been previously agreed, or risk having their contract terminated when it is next reviewed".

- "….significant specialised capital investment and the accompanying need to secure a contract reduces the bargaining power of producers"[14].

- "….in the poultry meat industry, where some producers have very few processor options, they have chosen to accept price decreases rather than risk having no contract."[15]

- :… Reported conduct in the poultry meat industry is particularly concerning and the ACCC will be investigating issues in this industry further"[16]

Most significantly, ACCC itself identified that current regulatory options are not sufficient:

> "The prohibitions on anti-competitive behaviour in Part IV of the CCA are not capable of preventing all of the harmful effects of bargaining power imbalances in PAG industries."[17]

The ACCC noted in Recommendation 4, that:

> "The ACCC has previously made recommendations for improving transparency through the cattle and beef, and wine grapes market studies, and the Dairy Inquiry. However, the ACCC has not made specific transparency recommendations in this inquiry. This is because any price or market transparency mechanisms need to be carefully considered to avoid unintended consequences, and must be tailored to a particular industry."[18]

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[9] Ibid p 115 – 130.
[10] Ibid.
[11] Ibid p 50.
[12] *Competition and Consumer (Industry Codes – Dairy) Regulations 2019* (Cth) ('Dairy Industry Code'); Competition and Consumer (Industry Codes – Horticulture) Regulations 2017 (Cth) ('Horticulture Code').
[13] ACCC, Perishable agricultural goods inquiry, November 2020, p XI.
[14] Ibid p 17.
[15] Ibid p 51.
[16] Ibid p 47.
[17] Ibid.
[18] ACCC, Perishable agricultural goods inquiry, November 2020, p xviii.

The ACCC also reviewed standard form contracts between processors and growers in the poultry meat industry.[19] The ACCC formed the preliminary view that several terms may raise concerns under the unfair contract term laws. These contracts contain types of terms the ACCC has previously considered unfair in other PAG industries, such as those allowing unilateral variation to contract factors that can impact price and unbalanced or short termination timeframes. Whether such terms are unfair within the meaning of the law will depend on the circumstances.

The ACCC considers that further examination of issues in this industry is required, including determining what issues can be addressed under current law.[20] This is separate and additional to the ACCC's examination of the use of unfair contract terms in grower contracts.

As a result of the PAG inquiry, the ACCC recommended that the government and industry explore measures to increase price transparency in PAG industries to increase competition.[21] The ACCC has identified that information failures and asymmetries occur across PAG industries. Improving market transparency can be an important tool for increasing competition and industry participants' confidence in markets.

Steps following on from the PAG Inquiry

In response to the PAG Inquiry, the Australian Government committed $5.4 million to improve price and market transparency in PAG industries by:

- delivering co-design workshops with PAG industries to understand their market transparency issues, opportunities and requirements
- delivering a grants program to develop and implement tailored mechanisms to improve price and market transparency.

The workshops were held between August and November 2021. The poultry meat-specific workshops developed ideas for three potential projects that could build on and address findings from the PAG Inquiry:

- Code of Conduct – a Code of Conduct based on risk apportionment and principles of fairness and acting in good faith.[22]
- Benchmarking – data sharing and benchmarking across the supply chain to address information asymmetries and build price indexes.[23]
- Benchmarking – A mechanism to benchmark costs and prices for growers, including a model for demonstrating farm returns as an essential part of the mechanism.[24]

Grower representatives supported the first two projects.[25] Processor representatives opposed the first two projects and supported the third.[26] Following the workshops, DAFF ran a competitive, targeted grant process open to research and development corporations and industry representatives who participated in the PAG workshops.

The National Farmers' Federation (NFF) was successful through DAFF's competitive grants program to deliver the project 'Exploring the potential for a Code of Conduct to increase market transparency and competition in Australian poultry meat supply chains.'

[19] Ibid 1, xiv.
[20] Ibid.
[21] Ibid 1.
[22] Department of Agriculture, Water and Environment (DAWE), 'Chicken meat industry first workshop 24 August 2021: Workshop communique,' Improving market transparency in perishable agricultural goods industries, 2021; DAWE, 'Chicken meat industry second workshop 28 September 2021: Workshop communique,' Improving market transparency in perishable agricultural goods industries, 2021; DAWE, 'Chicken meat industry third workshop 7 October 2021: Workshop communique,' Improving market transparency in perishable agricultural goods industries, 2021; DAWE, 'Chicken meat industry fourth workshop 1 November 2021: Workshop communique,' Improving market transparency in perishable agricultural goods industries, 2021.
[23] Ibid.
[24] Ibid.
[25] ibid
[26] ibid

It is important to consider that the Department of Agriculture, Fisheries and Forestry (DAFF) has a broad view of market transparency. That is, market transparency refers to the availability of information in a market, which might include:

- prices at different levels of a supply chain
- production or supply levels and trends
- consumption or demand levels and trends, or
- external factors that might affect market dynamics.

Importantly, market transparency issues include price and non-price factors such as quality assessment processes. While price is a key determinant of how information is communicated within a market, the Australian Government believes broader factors shape market transparency and influence decision-making. These include:

- lack of sufficient disclosure of business information or material facts before entering into a long-term contractual arrangement
- difficulties in negotiating fair trading terms
- lack of clarity and transparency in trading terms
- lack of contractual certainty, such as exposure to retrospective or unilateral contract variations
- reluctance to make complaints or enforce legal rights due to fear of retribution or loss of contract.[27]

Because of this definition and the market failures identified by the ACCC, the NFF has considered a broad range of issues within the poultry meat supply chain as part of this project.

A market may be said to be transparent where relevant information is readily available to and useful for all market participants to improve the efficiency of the market by reducing search costs, encouraging more vigorous competition, and strengthening market signals, allowing participants to make better informed and faster decisions. Transparency and understanding how the market operates can also give confidence to market participants that the market is operating fairly.

Improving market transparency will enable supply chains to allocate resources more effectively, adapt production in a timely manner and implement appropriate risk management strategies. This in turn brings confidence and trust to supply chains, enhancing the productivity, profitability and sustainability of perishable agricultural goods industries.

This project has three key components to inform a proposed Code, examine its potential effectiveness and explore other options to improve market transparency and competition in the Australian poultry meat supply chain. These components are:

- Examine policy options to increase market transparency and the role of a Code
- Conduct stakeholder engagement across the poultry meat supply chain, including workshops with growers and meetings with processors and retailers to establish the purpose and objective of a Code
- Draft a potential Code based on stakeholder feedback and existing industry codes.

This project was guided by an Advisory Committee with representatives across the poultry meat supply chain. The committee provided external advice and strategic oversight of the project to ensure it delivers agreed outputs, achieves intended outcomes, and adopts a culture of continuous improvement. Full details of the Advisory Committee is at Appendix 1.

This report represents the outcome of this endeavour.

[27] Australian Government, Industry Codes of Conduct Policy Framework, 2017.

PART 1 – Australia's Poultry Meat Industry

Industry structure

The poultry meat industry is a sustainable and efficient animal protein producer, second only to eggs as the least costly animal protein available to consumers.[28] Poultry is Australia's most frequently consumed meat product, representing about 45% of all meat eaten in Australian households at about 50kg/capita/year.[29]

Australia's domestic poultry meat industry contributes significantly to the Australian economy. The gross value of poultry farm production in 2022-23 is estimated at $3.5 billion, with chicken production representing around 95 per cent of total poultry production, with the remaining per cent being ducks and turkeys.[30] The retail value of poultry meat is estimated to be $6.6 billion.[31] Further, the industry provides direct employment to more than 58,000 people (full-time equivalents).[32] Many such employees are based in rural and regional communities.[33]

Poultry meat production occurs across Australia. Historically, poultry processing plants have developed close to markets and labour sources, with many large operations within 100 kilometres of a capital city. More recently, there has been a move to regional areas for size and land cost. Poultry meat farms, where birds grow from day-old chicks until ready for processing, are generally located close to the processing plant they supply.

Outlined in Figure 1, these areas include:

- NSW – Sydney's outer metropolitan areas, the Central Coast, Newcastle, Tamworth and Griffith
- Queensland – Mareeba, Redland Bay and other areas to Brisbane's south, south-west and north
- Victoria – Mornington Peninsula, Geelong and Bendigo areas
- South Australia – outskirts of Adelaide to Port Wakefield and along the mid-to-lower River Murray and Lakes
- Western Australia – Perth's outer metropolitan areas
- Tasmania – outer metropolitan areas
- Northern Territory – no commercial poultry meat farms.

With more than 95 per cent of chicken meat production consumed domestically, industry growth will be determined by population growth and share of animal protein consumption growth. Share of consumption growth is largely a function of the prices of other animal proteins. Demand for poultry meat in Australia will likely grow as more consumers replace other meat products.[34]

Poultry meat is a highly perishable product. This short shelf life of fresh product is the primary reason processed fresh poultry meat is generally not shipped from the east to the west coast and why birds are grown in all states with good accessibility to major markets (e.g. Griffith to service Sydney and Melbourne) or directly in those markets (e.g. western Sydney and the Central Coast of NSW).

[28] AgriFutures, AgriFutures Chicken Meat Program RD&E Plan (2022-2027), 2 February 2023, p 18-20; ACMF, Australian Chicken Meat, 2023, < https://chicken.org.au/our-product/australian-chicken-meat/>; Wiedemann, McGaha and Poad, 'Using Life Cycle Assessment to Quantify the Environmental Impact of Chicken Meat Production', Rural Industries Research and Development Corporation (April 2012);
[29] AgriFutures, AgriFutures Chicken Meat Program RD&E Plan (2022-2027), 2 February 2023, p 18; ACMF, ACMF, 2023, <https://chicken.org.au/>.
[30] ABARES, Agricultural Commodities: March 2023 edition, 2023.
[31] AgriFutures, AgriFutures Chicken Meat Program RD&E Plan (2022-2027), 2 February 2023, p 18.
[32] Ibid.
[33] Ibid.
[34] Umberger & Malek, Market insights for Australia's chicken meat industry, 2021

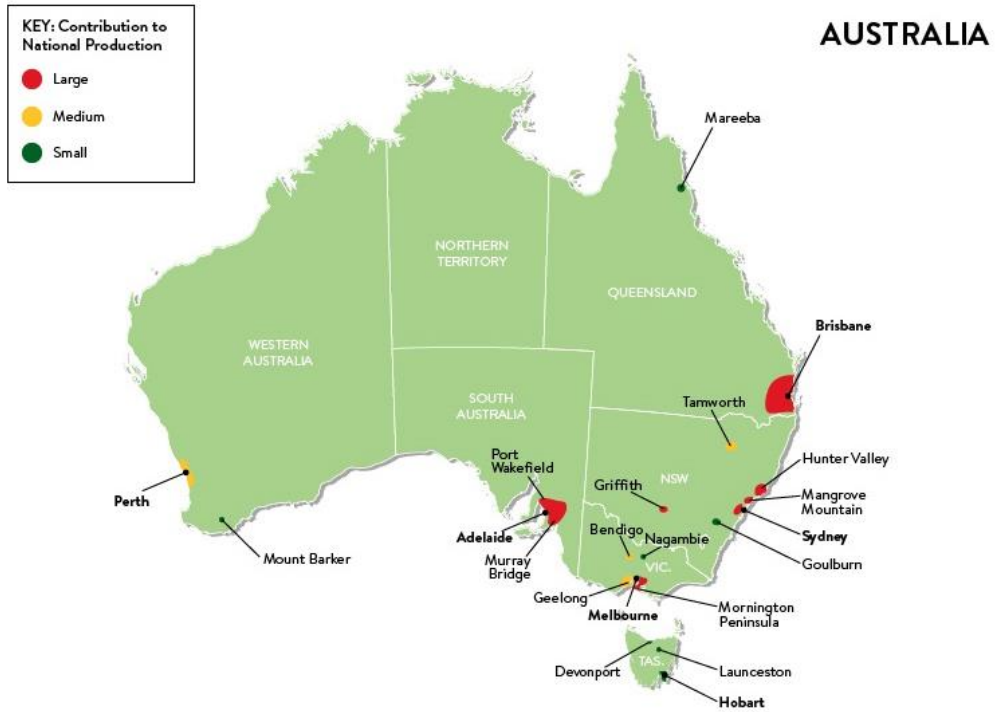

Figure 1. Location of poultry meat production in Australia (Australian Chicken Meat Federation, 2023, < https://chicken.org.au/our-product/facts-and-figures/>.

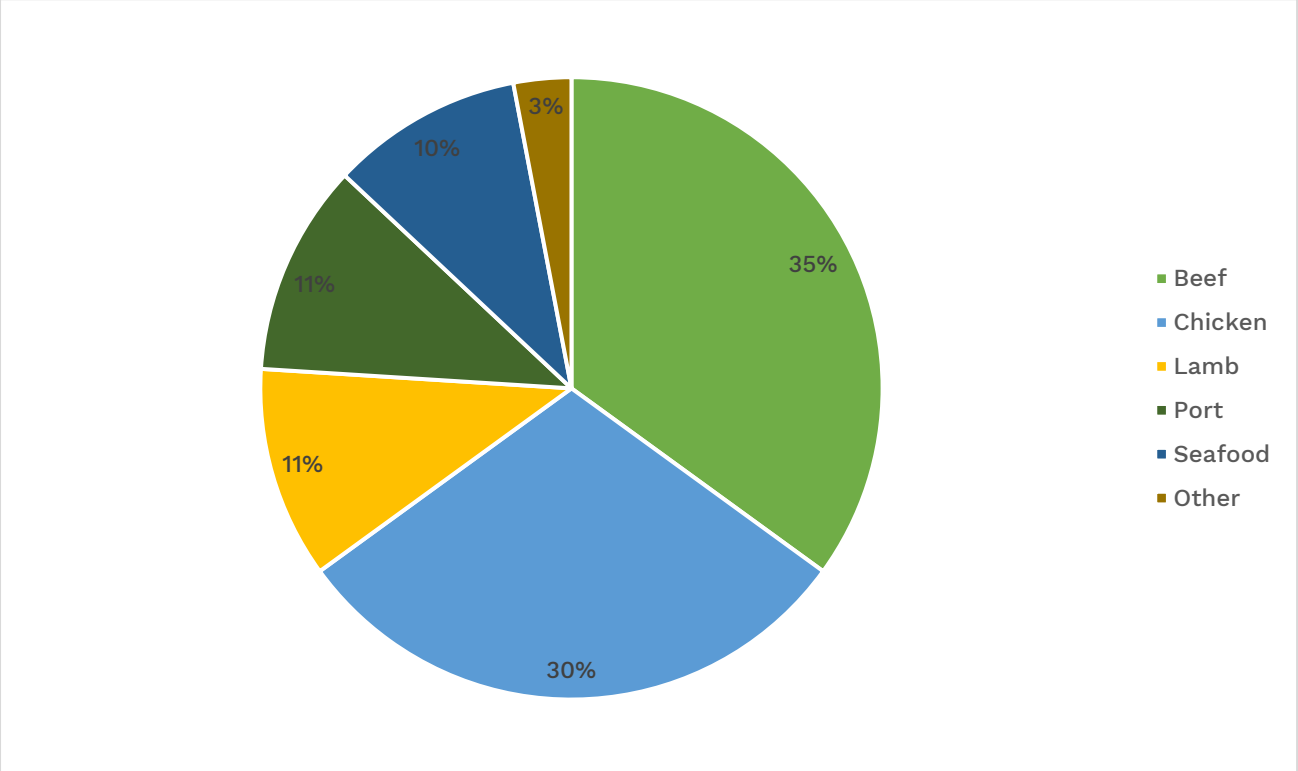

Figure 2. Retail fresh meat value share (FY20), source: Granwal, Fresh meat market distribution by value 2021, April 2022; see also Meat & Livestock Australia, Market Snapshot: beef and sheepmeat, 2022.

Most poultry meat is sold fresh to supermarkets and food services. Only a relatively small proportion is sold as frozen (unprocessed), with a larger proportion sold frozen as secondary processed foods, such as chicken nuggets (Figure 3).

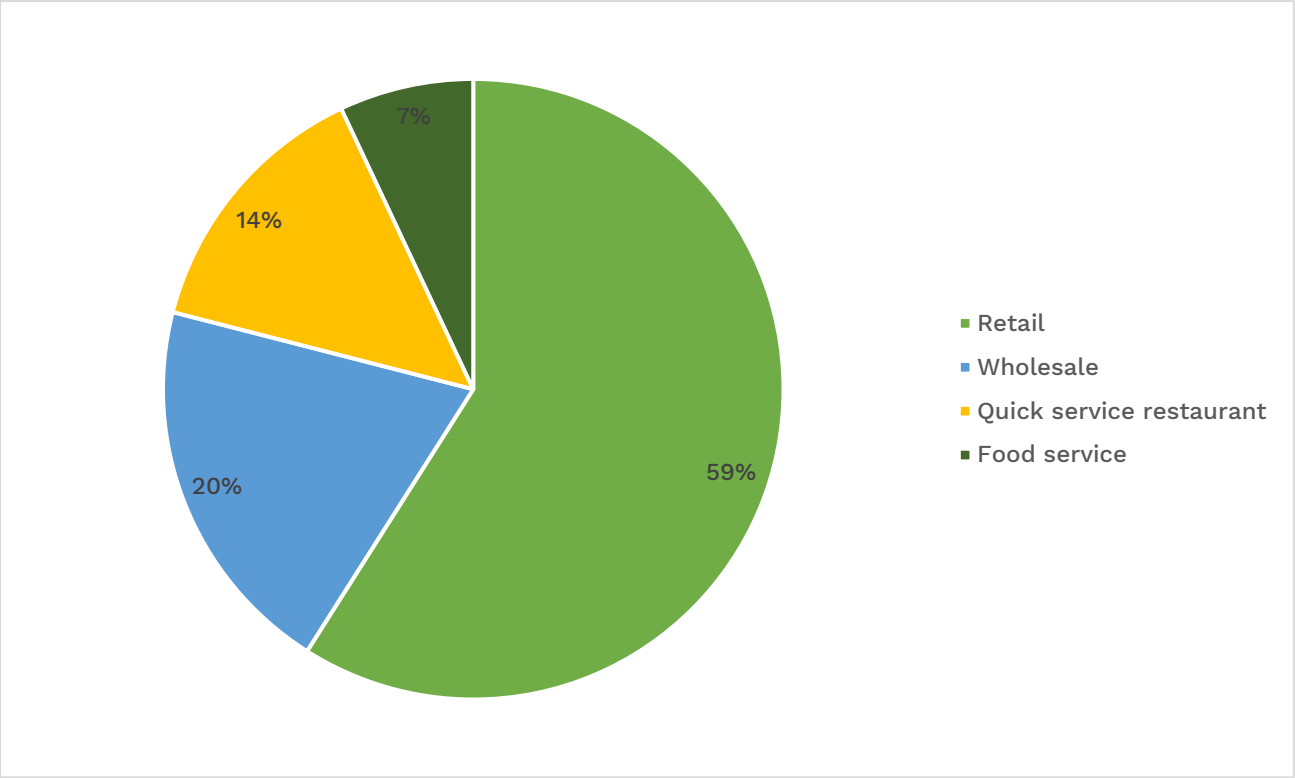

Figure 3. Sales channels of poultry meat (FY16), source: Citi, Australian Financial Review

This need for a constant supply of fresh produce also puts logistical, time and management pressure on the industry. Meat poultry eggs are laid daily, and chicks hatch daily and must be placed on farms that must be ready for them, with correct nutrition already provided. Similarly, at the end of the growth period, the processing plant must be prepared to take finished birds when they are at the correct weight, and supermarkets and food service must be ready to receive fresh meat. This is a logistical challenge and can be upset relatively readily.

This differs from all other agricultural products (except dairy) in that no storage of fresh products is possible. Unlike dairy, there is no UHT process to maintain the freshness of the primary processed product, only freezing, which does not align with consumer preferences. Unlike dairy, where around 30% is consumed as fresh milk[35], it is estimated that more than 80% of meat poultry is sold fresh.[36]

The poultry meat supply chain

Structure and ownership

The Australian poultry meat industry comprises growers, processing companies, and retailers. Processors are vertically integrated, commonly owning and operating all or most stages of the supply chain, with the main exception being growing birds from day-old chicks to market-age birds. This responsibility is contracted to growers. Processors contract multiple growers to grow birds, but growers usually have only one processor to whom they can sell.

Poultry meat processors

In Australia, the processor commonly owns and operates:

- Parent breeding farms
- Hatcheries
- Feed mills

[35] Burt, 'Cheers to fresh milk', NSW Farmers, 7 March 2023.
[36] ACMF, Structure of the Industry, 2023, accessed May 2023 < https://www.chicken.org.au/facts-and-figures/>

- Processing plants
- Distribution

The processor supplies the grower with the day-old birds, feed, medication, veterinary services and pick-up crews. Processors control significant portions of the growers' inputs, scale, and turnover.[37] It is standard practice for the processor to contractually specify the methodology the grower must use to care for the birds. The processor also controls the distribution of the product to retailers.

Poultry meat farms

Conventional farms are intensive, highly mechanised, and require significant infrastructure investment. Major companies operating highly integrated supply chains contract growers to rear birds.[38] Up to 80 per cent of Australia's meat birds are produced by approximately 700 growers under these contracts[39]. Independent family growers or corporate growers may own farms, the latter being companies that own several farms, each managed by a farm manager.

The grower provides management, land, infrastructure (sheds), equipment, utilities (gas and power), and the labour necessary to grow the processor's birds. It is noted that management methodology is commonly contractually prescribed by the processing company.

Growers control the land on which the birds are grown and other key inputs, including labour, water and energy (electricity and gas). Growers are often responsible for supplying and removing bedding (aka "litter") and the legal disposal of dead birds. Contracts between growers and processors specify the inputs the grower must provide, such as land, sheds, equipment, labour, water, utilities and insurance, and the methods the grower must use to care for birds.

Importantly, the processor retains ownership of the birds at all times. The grower is contracted to raise the birds for a period of 6-8 weeks (a "batch") and is paid a fee to do so—either as a flat rate per metre square per year or on a per bird basis. Processors also reserve the right to operate a Pool System where one exists.

The fee paid by processing companies to growers for rearing their birds may be negotiated directly by the processor with individual growers or between the company and groups of growers under ACCC authorisation.[40]

Corporate meat poultry growers

A small number of very large contracted corporate meat poultry growers own multiple farms and operate under a corporate type of management structure. Their ownership structures may involve institutional, private equity, public investment funds or syndicated investments.

Corporate growers may benefit financially from their scale of operations and typically negotiate directly with processors rather than through grower association groups. The form of current grower's agreements broadly matches that of family growers as the processors seek consistency across their grower pools. Corporate growers may be more likely to own or build larger-scale farms than family farms. However, they can also grow by acquiring ex-family farms.[41]

Despite their scale, corporate growers are equally impacted by the same processor-friendly contractual obligations as family farms and are exposed to margin squeeze over time from fee reviews that don't keep up with inflation.

[37] NSW Farmers, ACCC Perishable Agriculture Goods Inquiry Submission, September 2020.
[38] ACMF, Our Industry, 2023, <https://chicken.org.au/our-industry/industry-overview/>.
[39] Ibid; Australian Chicken Growers Council Limited (ACGC), Our Industry, 2023, <https://acgc.org.au/our-industry/>.
[40] Victorian Farmers Federation (VFF), ACCC Perishable Agricultural Goods Inquiry Submission, 2020, p 2.
[41] ACGC, Our Industry, 2023, <https://acgc.org.au/our-industry/>.

Typical infrastructure costs

The cost of requisite infrastructure to produce poultry meat is high and relevant to negotiating contracts between processors and growers.

For meat poultry growers, the ability to invest significant capital in highly specialised infrastructure and equipment is dependent on long-term commercial relationships with processing companies. For the most modern farm housing (sheds), no other viable farm enterprise has so far been found that does not require significant additional capital expenditure. With no processor alternative within most growing regions, the terms of the single growing contract available to a grower determine their ability to make repayments and maintain specialised infrastructure and machinery on their farms.

For context, the Australian Chicken Meat Federation (ACMF) estimates that the total infrastructure required to support the production of 780,000 birds per week (about 6.7% of the current total production capacity of the Australian poultry meat industry) is worth more than $525 million[42], made up of the following major components:

- Excess of $200 million to establish a new primary processing plant capable of handling a volume of 780,000 meat birds per week, including land and infrastructure.
- $60 million for fertile egg production facilities (breeder farms) required to produce 780,000 meat birds per week
- $50 million for a modern hatchery complex
- $45 million for a feed mill to produce the volume of feed necessary
- $170 million for meat poultry rearing farms is needed to ensure a supply of 780,000 meat birds per week (equivalent to around 32 average farms with a capacity for 240,000 birds)
- Between $5 million and $7.5 million, averaging $5.4 million for a farm comprising six sheds housing up to 240,000 meat birds at any one time and producing 1,320,000 birds a year across an average of 5.5 batches.[43]

[42] ACMF, Structure of the Industry, 2023, accessed May 2023 < https://www.chicken.org.au/facts-and-figures/>
[43] Ibid.

PART 2 – Policy Issues

Several inquiries have identified harmful activities in Australia's poultry meat supply chain. Most recently, these harmful activities were highlighted by the ACCC's PAG Inquiry. Increased market concentration and vertical integration in the poultry meat supply chain appear to have resulted in the use of market power to the detriment of poultry meat growers across Australia. Is it the misuse of this increasing market power that results in harmful activities across the poultry meat supply chain. The imbalance between growers and processors has led to significant issues affecting businesses' free and fair operation within the poultry meat supply chain.

ACCC Perishable Agricultural Goods Inquiry final report and outcomes

The PAG Inquiry considered the extent to which bargaining power imbalances exist in PAG markets and whether they impact the efficient operation of these markets. The report laid out the following:

- The relationships between suppliers at different levels of the supply chains and how this affects bargaining power
- The economic effects of bargaining power imbalances
- The scope of the Competition and Consumer Act 2010 (CCA) to deal with these issues
- Recommendations for amending the regulatory framework to address problems identified

Perishability results in products that must be delivered within a short period, limiting the bargaining power of producers who cannot hold out for better terms and conditions of sale. These markets are also characterised by producers' inability to change supply in response to market prices, as decisions are made well in advance of when goods are supplied to the market. In the case of the poultry meat market, this is exacerbated by processors having a large influence on growing decisions, the fact that processors control the net production by managing egg set and owning the birds, and the fixed nature of the growers' specialised infrastructure which cannot be scaled up or down or used for other enterprises in any short period.

Markets with many producers (particularly those tied by financiers), very few processors and the retail duopoly can lead to market failure through two avenues. At the farm gate, processors can reduce prices paid to producers to below their marginal cost of production, resulting in a lower volume of product that would otherwise be supplied. This does not occur in the meat poultry industry as the processors own and control bird placement. At the wholesale or retail level, firms can increase their price above marginal cost, resulting in some buyers not participating in the market who otherwise would.

There are other less obvious ways in which market failure can occur. Firms not threatened by competition from new entrants or expansion of other firms have a diminished incentive to innovate or invest in more cost-effective production methods. This can be seen in the poultry meat supply chain, where processors have few incentives to drive growth into more profitable secondary markets, potentially including international trade, but place significant pressure on growers to reduce their cost of production through the pooled pricing mechanism, chasing primarily low profitability volume markets.

An oligopsony, a market with a small number of buyers, can lead to imbalanced price pressures on producers and reduced transparency and barriers to switching, further diminishing competition. In the poultry meat supply chain, processors can gather and aggregate more information about market conditions sooner than individual growers, putting them in a better position to manage risk.

All of these conditions can lead to the following outcomes:

- Increases the difficulty for growers to make informed decisions about their options to sell specific services
- Allows the processor to shift risk to growers.
- Puts processors at an advantage in bargaining as they have almost complete information related to costs and the value of products at the wholesale level, and growers have none.
- Owing to information failures, growers cannot accurately make investment or resource allocation decisions
- where growers' margins are diminishing, they will have less capacity to respond to future disruptions, climate impacts and natural disasters when they occur.
- Growers are experiencing increasing input costs and rising costs of energy and labour, while prices received are not increasing at a similar rate.
- Industry participants are reluctant to report concerning supermarket conduct, for fear of retribution.

Reports claim that processors exercise their market power and cause damage through unfair contract terms and harmful trading practices. Reported examples include:

- Poultry meat growing contracts that allow processors to unilaterally alter growers' batch densities and stocking rates, which greatly impacts producers incomes, beyond that which already exists via the "pool" system.[44]
- In certain regions in the poultry meat industry, processors reportedly have leveraged their monopsony position to decrease growers' prices mid-contract, causing growers to forgo benefits that the contract otherwise entitled them to.[45]

The PAG inquiry noted that Australia's competition laws are currently inadequate at addressing the harmful effects of significantly unequal bargaining power, as they are almost exclusively focused on preserving the *status quo* level of competition. The ACCC considers that practices that justify a regulatory response are occurring.

Actions and recommendations from the PAG inquiry related to the poultry meat industry included:

- "The ACCC will investigate the potential UCTs (Unfair Contract Terms) identified in the poultry meat industry.
- The ACCC will engage directly with agricultural industry associations in 2021 to explain how the class exemption for collective bargaining may be beneficial and how businesses can access the regime.
- The ACCC recommends introducing an economy-wide prohibition on unfair trading practices into the ACL.
- The ACCC recommends that Australian governments and PAG market participants explore measures to increase price transparency in PAG industries to increase competition in those industries."[46]

Concentration of supply chain

The poultry meat industry is highly concentrated and vertically integrated, with individual processing companies owning several aspects of the poultry production supply chain (parent breeding farms, hatcheries, feed mills and processing plants).[47] Six processors control approximately 90 – 95 per cent of the national poultry meat market.[48] This is summarised in Figure 4, which shows the market share of Australia's six major poultry meat

[44] ACCC, Perishable agricultural goods inquiry, November 2020, p X; Australian Chicken Growers Council Limited (ACGC), Submission to the Perishable Agricultural Goods Inquiry, 17 September 2020, p. 3; VFF, ACCC Perishable Agricultural Goods Inquiry Submission, 2020, p. 8.
[45] ACCC, Perishable agricultural goods inquiry, November 2020, p X; ACGC, Submission to the Perishable Agricultural Goods Inquiry, 17 September 2020, p. 3.
[46] ACCC, Perishable agricultural goods inquiry, November 2020, p xi-xii, xvii-1.
[47] ACMF, Structure of the Industry, 2023, accessed May 2023 < https://www.chicken.org.au/facts-and-figures/>; ACGC, Our Industry, 2023, <https://acgc.org.au/our-industry/>.
[48] Ibid.

processors. In 2020, two companies supplied approximately 70 per cent of Australia's poultry meat – the publicly owned Inghams Enterprises (40 per cent of market share) and the privately owned Baiada (33 per cent of market share).[49] Both these companies have a national footprint.

The remaining processors do not have national footprints but operate in a single geographic area. Cordina Poultry Farms (approximately 6 per cent of market share) is located in NSW's Sydney Basin, Central Coast and Hunter regions.[50] In Victoria, Turosi (10 per cent of market share) is located around Thomastown (Melbourne) and Geelong, and Hazeldene's Poultrys (6 per cent of market share) is based in the Bendigo area. Golden Cockerel (5 per cent of market share) operates around Mt Cotton in Queensland.

Several smaller processors, which are integrated to some degree, make up the balance of production, totalling between five and nine per cent of total poultry production.[51] It is common for growers to have no alternative processor in their growing region.

The national evolution of Baiada and Ingham's has resulted in the elimination of competition in regions. Each geographic growing region comprises several growers and one processor, without any processor alternative for growers. For example, NSW growers near Griffith and Tamworth are contracted with Baiada, with no alternative processor[52]. This contrasts with ten years ago when six companies owned nine significant poultry meat processing plants in NSW. Now, two poultry meat processors operate four regional plants in NSW, producing 35% of the national market.[53]

Further, no current or historical evidence suggests that national processors will expand in less favoured production regions or enter regions with an established, dominant processor. As a result of this market structure, most growers now operate in geographic monopsony environments, with only one processor in their growing region. This industry structure impacts the bargaining power of growers when seeking to negotiate contracts with processing companies.

Grower representative bodies suggest that the relationship between processors and their contract growers has deteriorated due to the erosion of growers' bargaining power in contract negotiations,[54] reduced numbers of processors and changes to the structure of some processors.

Specifically, it is alleged that the processors use their disproportionate and strong bargaining position to present growers with unfair contract terms.[55] With no viable processor alternative and often significant investment in specialised poultry infrastructure, growers tend to agree to such terms to avoid adverse circumstances, including a real prospect of bankruptcy.[56]

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[49] Ibid.
[50] Macdonald, Thompson and Sood, PAG processes deal for chicken group Cordina Farms, Australian Financial Review, 15 March 2022; ACMF, Structure of the Industry, 2023, accessed May 2023 < https://www.chicken.org.au/facts-and-figures/>.
[51] ACMF, Structure of the Industry, 2023, accessed May 2023 < https://www.chicken.org.au/facts-and-figures/>; ACGC, Our Industry, 2023, <https://acgc.org.au/our-industry/>.
[52] NSW Farmers, ACCC Perishable Agriculture Goods Inquiry Submission, September 2020.
[53] Ibid p 12.
[54] ACGC, Submission to the Perishable Agricultural Goods Inquiry, 17 September 2020; VFF, ACCC Perishable Agricultural Goods Inquiry Submission, 2020; NSW Farmers, ACCC Perishable Agriculture Goods Inquiry Submission, September 2020; National Farmers' Federation (NFF), Submission to Australian Competition and Consumer Commission Price Inquiry - Perishable Agricultural Goods, 18 September 2020.
[55] ACGC, Submission to the Perishable Agricultural Goods Inquiry, 17 September 2020, p 3; VFF, ACCC Perishable Agricultural Goods Inquiry Submission, 2020, p 6.
[56] Ibid.

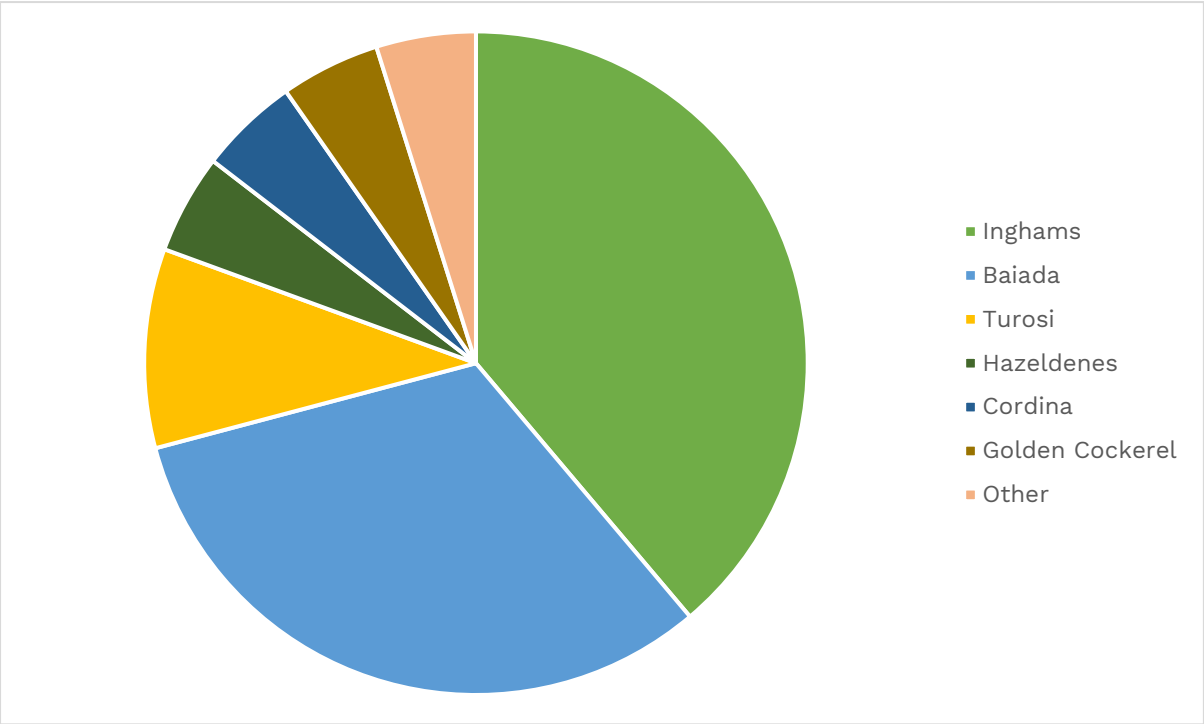

Figure 4. Market value share of poultry processing companies (FY20) Source: Citi, Australian Financial Review

Use of unfair contract terms

Unfair contract terms and harmful trading practices have been consistently reported as the fundamental issue arising from the power imbalance in processor-grower relationships.[57] The ACCC's PAG Inquiry outlined numerous harmful trading practices by processors towards growers.[58] This inquiry was informed, in part, by submissions from grower representatives. Processor representatives did not make public submissions to this inquiry.

In the PAG Inquiry, the ACCC formed the preliminary view that several contract terms commonly found in the poultry meat industry raise concerns under unfair contract term laws.[59] The ACCC formed this view on the basis that contracts between processors and poultry growers commonly contain the types of terms the ACCC has previously considered unfair. This includes terms that allow unilateral variation to contract factors that can impact price and unbalanced or short termination timeframes. The ACCC clarified that whether such terms are unfair within the meaning of the law will depend on the circumstances.[60]

As reported by growers through the PAG Inquiry, the following terms have been commonly found in contracts between processors and growers:

1. Contract terms (durations) that do not allow the grower sufficient time to amortise capital expenditure or obtain returns on investment;

2. Contract terms that can be altered by the processor based on "inefficiency" or with termination clauses (e.g. on importation of poultry meat), which effectively render any current contract period useless.

[57] ACGC, Submission to the Perishable Agricultural Goods Inquiry, 17 September 2020; VFF, ACCC Perishable Agricultural Goods Inquiry Submission, 2020; NSW Farmers, ACCC Perishable Agriculture Goods Inquiry Submission, September 2020; NFF, Submission to Australian Competition and Consumer Commission Price Inquiry - Perishable Agricultural Goods, 18 September 2020.
[58] See, e.g., ACCC, Perishable agricultural goods inquiry, November 2020, p x-xii.
[59] Ibid p xi.
[60] ACCC, Perishable agricultural goods inquiry, November 2020, p xi-xii.

3. Clauses that require the grower to make significant capital investments during the term of the contract or as a condition of renewal, without any reciprocal commercial consideration by processors or consideration of depreciation over time;

4. Clauses that unreasonably transfer risk to the grower, for example, require growers to pay indemnities insurance under a broad range of circumstances that covers the processor;

5. Clauses that require the grower to hold licensing, rights, or insurance above their usual requirements. This includes full-replacement insurance policies covering property that is held on the grower's premises but owned by the contract-issuing party or recently a requirement to hold water rights above above that required for the farm;

6. Clauses that require growers to provide evidence of processors' contractors complying with a wide range of processor-established codes of conduct;

7. Clauses that require the grower to pay a financial penalty when certain misadventures occur, where the method for calculating the amount of these penalties is not disclosed to the grower;

8. Asymmetric clauses restrict the grower from assigning their contract without similar requirements placed on the contract-issuing party;

9. An absence of clauses that offer effective or affordable dispute resolution processes;

10. An absence of clauses that enable growers, as unsecured creditors, to recoup losses should the processor become insolvent;

11. Clauses set prices according to a grower's performance relative to other growers, where that performance is often determined by the price or quality of inputs over which the grower has little control. 'Inefficient' or 'below average' performance – as judged by the criteria of the processor – is grounds for reducing the price payable or terminating the contract – see section on *The Pooling System*;

12. Unilateral termination clauses which allow the processor to terminate the contract with inadequate notice and for reasons such as legislative changes, general economic pressures, or closure of facilities owned by the contract-issuing party;

13. Clauses that require the grower to comply with internal standards designed by the processor or external standards designed by a non-government organisation. The standards may change during the term of the contract, and any breach may result in the contract being terminated and

14. Complex pricing clauses enable the contract-issuing party to change prices unilaterally and retrospectively. [61]

Following the PAG Inquiry, several processors agreed to amend certain contract terms to address some of the ACCC's concerns.[62]

Use of unfair trading practices

The misuse of market power extends beyond the historical use of unfair contract terms in contracts between processors and growers. Contracts may include clauses that might be

[61] NFF, Submission to Australian Competition and Consumer Commission Price Inquiry - Perishable Agricultural Goods, 18 September 2020, p 8-9.
[62] ACCC, Chicken meat processors address potential unfair contract terms, 25 May 2022 < https://www.accc.gov.au/media-release/chicken-meat-processors-address-potential-unfair-contract-terms>.

deemed to be fair (e.g. a clause that compensates a grower for bird mortality, which is not the growers' fault) with no intention of honouring that clause. This is also the case with processor ownership of the birds; however, they force the grower to carry the cost of disposal of dead birds as a loss of income and the actual cost of physical disposal of carcasses.

There is also a verifiable shortage of good faith in negotiations between processors and growers or grower groups. A processor is generally quite happy to keep placing birds on farms once a contract has expired, in action under the conditions of the previous contract, as this favours the processor. Growers may be offered contracts on worse conditions than the previous in the face of known rising costs, on the basis that growers desperate to keep their bank loans will sign regardless. Similarly, negotiations between growers and processors that appear to be going well may suddenly have the processor simply re-present the original poor contact after some months when growers are becoming desperate.

Further, it is reported that processors increasingly seek to obtain and control production data to set the prices paid to producers as a cost-plus margin.[63] This practice eliminates the incentives for producers to invest in productivity improvements since any cost savings resulting from these investments will cause a lowering of the output price.[64]

Victimisation and Commercial Retribution

Victimisation and commercial retribution are also common in the poultry meat supply chain. Over decades, it has been common for growers who act as representatives for contract negotiation, even when an ACCC authorisation is in place, not to be offered a new contract or terminated “on the spot.” High-performing grower representatives suddenly find themselves at the bottom of the payment pool with no explanation and no ability to independently validate the data on which the pool payment is based.[65]

This victimisation has created a fear of commercial retribution where any grower will be punished for challenging unfair practices within the poultry meat supply chain. Because poultry meat farms are highly specialised with little to no option for activities that can substitute poultry meat production, losing a contract with a processor effectively renders the farm a stranded asset. As a result of this behaviour over such a long period, growers have been conditioned not to speak up, including to exercise their legitimate legal rights.

Pool systems

Processors commonly pay Australian growers through a competitive performance-based payment system called a ‘pool system’.[66]

Theoretically, in this system, farms of the same type (i.e. free range, barn, organic) are pooled together and compete against one another based on productivity parameters, such as average live weight and feed conversion ratio, for a bonus payment over several batches.[67]

A pool system intends to reward farms that out-perform the average grower for the same batch, using the same processor-provided inputs. Processors argue that the system encourages growers to actively and consistently pursue productivity increases and rewards growers with better on-farm management practices.[68]

[63]NFF, Submission to Australian Competition and Consumer Commission Price Inquiry - Perishable Agricultural Goods, 18 September 2020.
[64] Ibid.
[65] NSW Farmers, ACCC Perishable Agriculture Goods Inquiry Submission, September 2020, p 23; ACGC, Submission to the Perishable Agricultural Goods Inquiry, 17 September 2020.
[66] Pitkin, *Drivers for Innovation in the Poultry Industry,* 2019, p 28-29
[67] Ibid.
[68] Ibid.

Ten to fifteen years ago, traditional pool schemes went hand in hand with collective bargaining.[69] This was because, firstly, effective and valid operation of collective bargaining power required growers to be on a level playing field for growing fees and contract terms and conditions.[70] This premise extends to growers having similar production output ability or capacity. Secondly, the states' regulatory systems enabled a standard fee payable to growers as a fee for their services.[71] The pooling system traditionally assessed the total fee for service payable to a 'pool' of growers on an equal playing field and then re-distributed the growers' total fee based on their performance against one another in the pool. The pooling system does not change the total fee for all the meat poultry growers' services paid by the processor, even if, by virtue of growers' high performance, the processor is rewarded with significant amounts of additional poultry meat to process. As a result, there was initially an acceptance and an element of grower ownership of pools, with growers appointing representatives to legitimately scrutinize pool payment calculations, some degree of validating the data presented, and changes to the system normally requiring negotiation with growers as a group.[72]

The re-distribution of the total fee to growers through the pooling system means that growers who produce birds at a comparatively below-average standard are paid below the 'average growers' fee'. This can place growers who allegedly consistently fall below-average at a financial disadvantage, as they consistently receive less farm income, which may be below the cost of production.

Although traditionally articulated as a 'bonus' for high-performing growers, for growers who produce below-average birds, the system could be equally accurately described as a retrospective step-down of payment for service by payment shifting from one grower to another.

As discussed later in this report, growers have several concerns about the pool systems' fairness, transparency, and strategic, commercial manipulation. These concerns include:

- Due to their diminished negotiating power, growers cannot negotiate a 'fee for service' payment structure. As such, growers have no option but to participate in a pool system. This is particularly an issue for growers whose performance is alleged to be consistently below-average, as they consistently receive a reduced payment as a result – and this payment is usually below the real cost of production.
- The quality and variability of processor-provided inputs between 'pooled' farms can result in unfairness, as growers' position in the pool system is affected by factors external to their control.
    - Common examples include batch productivity being impacted by processor-controlled inputs such as pick-up times, different quality of nutrition and the timely provision of medicine, which impacts growers' pool position and pool payment.
    - The pool system also fails to account for naturally occurring quality variabilities between processor-provided inputs, for example, differences in the robustness of hatchlings placed onto farms.
    - The pool system assumes that the grower-controlled inputs, namely management practices, labour, and electricity, affect the pool system price-determination performance.
    - Not all farms have birds placed at the same time or even in the same week. Weather conditions can, therefore, have a significant effect on productivity.
- There is a lack of price transparency, as growers have no visibility over how their position or payment in the pool system is determined. Even if they did, they cannot determine the veracity of the productivity elements in the pool claimed by the processor. For example, it is common for processors to refuse to provide original weighbridge dockets for birds collected from the farm, so the grower has no means

[69] VFF, ACCC Perishable Agricultural Goods Inquiry Submission, 2020, p 3.
[70] Ibid.
[71] Ibid.
[72] Pitkin, Drivers for Innovation in the Poultry Industry, 2019.

to verify the kilograms grown or the feed conversion ratio against which they are judged in the pool.

PART 3 – Stakeholder Perspectives

Poultry growers

Overview of poultry grower stakeholder engagement

On behalf of the NFF, NSW Farmers undertook extensive consultation with growers across Australia. This occurred through several avenues, including in-person workshops, online workshops, and direct conversations. These multiple avenues were important because of the number of growers reporting their fear that if their processor found out that they had consulted with the project group, they felt that retribution from the processor would be a likely outcome.

The grower workshops were undertaken in Western Australia, South Australia, Victoria, Tasmania, New South Wales and Queensland. These occurred on the following dates:

- Queensland – 25 July
- Queensland - 26 July
- South Australia – 28 July
- Western Australia – 8 August
- Victoria – 15 August
- Victoria – 16 August
- Tasmania – 18 August
- New South Wales – 23 August
- New South Wales – 24 August
- New South Wales – 25 August

Following these workshops, NSW Farmers hosted four online workshops through Zoom. These workshops allowed additional growers to participate in the stakeholder engagement if they could not make an in-person workshop. These online workshops were open to growers across Australia and were held on:

- 29 August
- 30 August
- 20 September
- 18 October

These workshops were supplemented by an anonymous written survey that asked specific questions about the imbalance of power between growers and processors, negotiation conditions, and contract renewal. The survey document was sent to every grower for whom we could establish a viable email address. All workshop participants were encouraged to complete the survey following the in-person workshop.

Across all grower workshops, NSW Farmers spoke to approximately 150 growers. In addition to these workshops, there were 216 responses to the survey. Across both forms of engagement, the NFF and NSW Farmers estimate this represents approximately 40 – 50 per cent of the national poultry growout. This represents a statistically valid sample of the growers in Australia's poultry meat supply chain.

Survey

The NSW Farmers Poultry Meat Manager wrote surveys in consultation with the National Farmers' Federation. These questions were designed to gain the perspective of growers in the supply chain. The Project Advisory Committee reviewed the survey questions, and relevant changes were made to questions based on the committee's advice. The full list of survey questions is in Appendix 2. The responses to this survey are outlined below.

Grower workshops

The project design called for ten workshops with poultry meat growers across Australia to be delivered to inform the project outcomes. The NFF and NSW Farmers engaged an independent facilitator to assist in designing and delivering the workshops.

To ensure consistency across all workshops, a comprehensive design process was undertaken with the facilitator before the workshops were rolled out. This ensured workshops would maximise the time spent with growers and deliver effectively against the project objectives.
There were four main questions asked of the participants at each workshop:

- *Where are we now as an industry?*
- *What would we like the industry to look like in the future?*
- *What does a Code of Conduct need to look like to help take the industry where it needs to go?*
- *What needs to happen now to make sure that we get to where we want to be?*

The format of the workshops was designed to capture all the relevant aspects of the industry, both positive and negative, as well as offer a pathway through the heightened states of emotion that can accompany opportunities such as these. Ultimately, the workshops provided an opportunity for grower led, grassroots feedback, and potential solutions for a better poultry meat industry. Small group work was enacted at each of the workshops to allow everyone present to have a voice and share their knowledge equally.

Survey Results

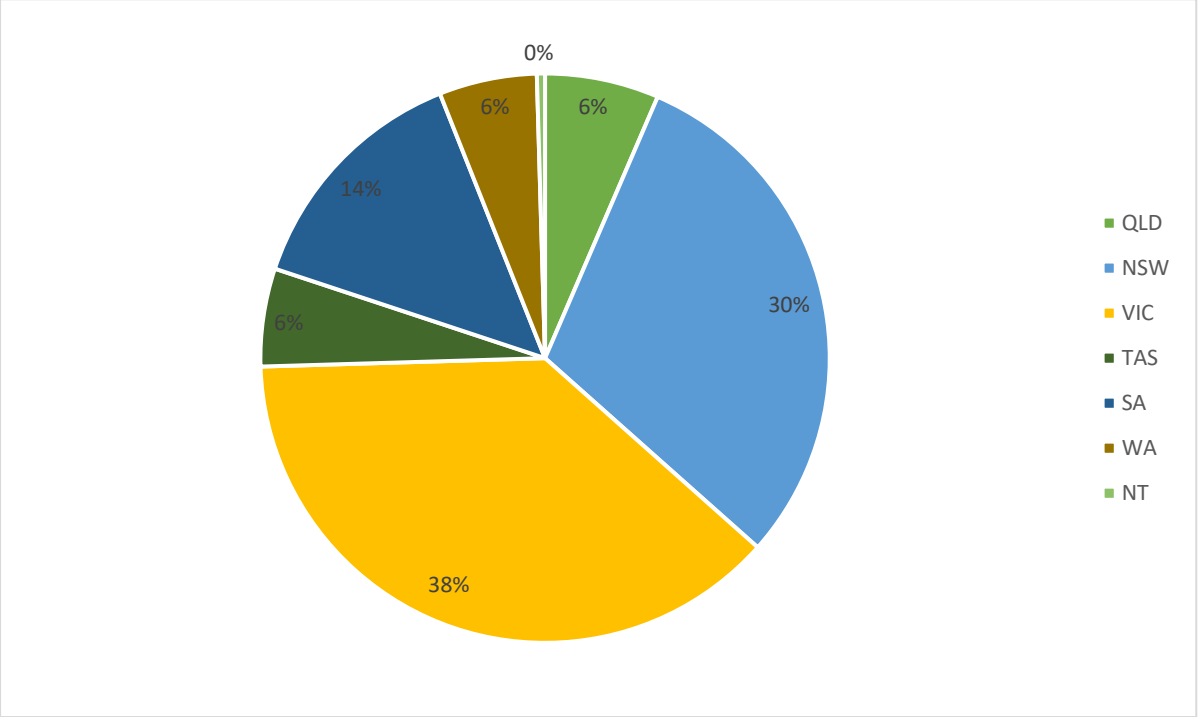

Figure 5. State/Territory where the respondent's businesses is located.

Survey responses demonstrated a clear lack of options for growers to switch between processors. Sixty-seven per cent of growers said there was only one processor in their region. Of those with multiple processors, only 16 per cent could easily compare each processor's contract offerings, price, and other considerations.

Survey responses also highlighted a clear imbalance of power between growers and processors. Ninety-two per cent of respondents stated that the imbalance between themselves and the processor impacts the terms of their contract. Eighty-eight per cent of

respondents also said that they had seen the imbalance between grower and processor exercised in the past five years.

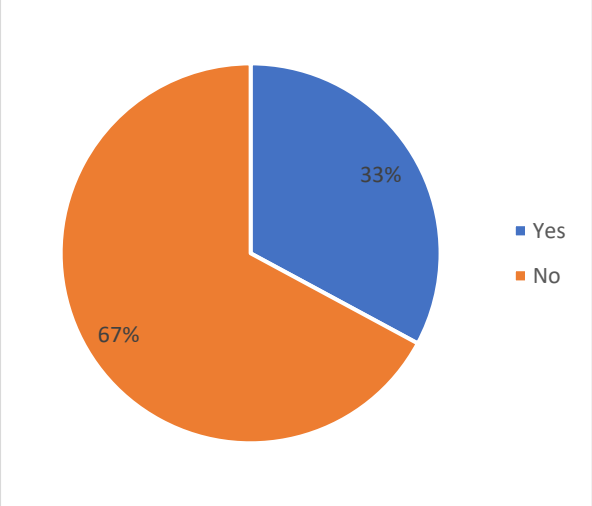

Figure 6. Is there an alternative processor to your current processor available in your region?

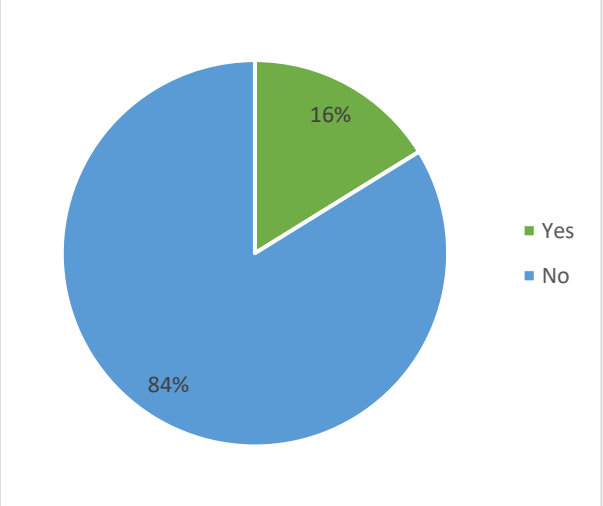

Figure 7. If there are alternative processors in your region, are you easily able to compare processors in terms of contract offerings, price, and other considerations?

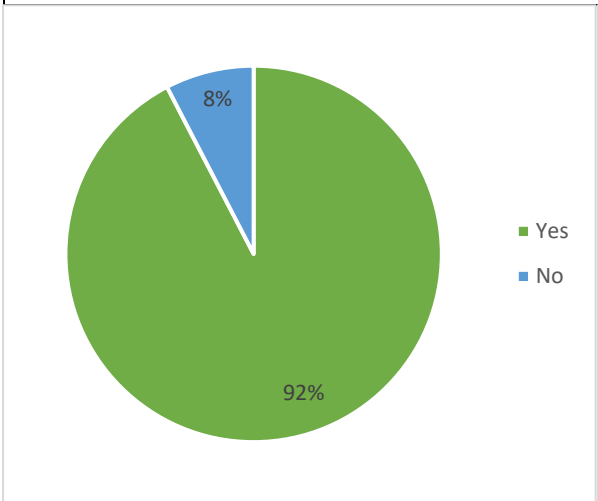

Figure 8. If there is an imbalance, does the imbalance impact the terms of your contract with your processor?

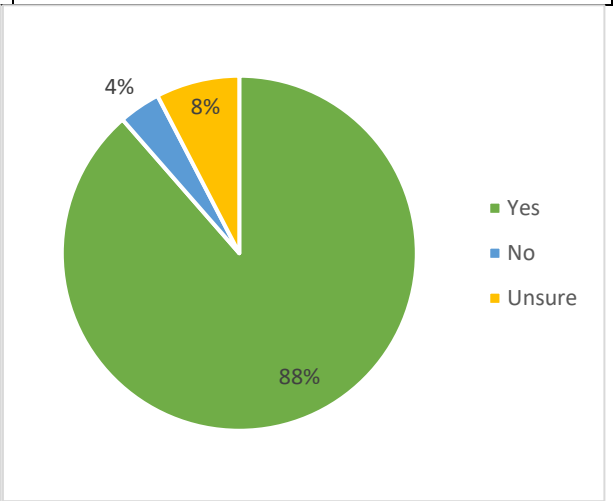

Figure 9. If there is an imbalance between growers and processors, have you seen this exercised in the past five years?

When asked to describe the relationship between the grower and the processors in the industry, 67 per cent of respondents indicated that the relationship was not good or dysfunctional. Words used to describe the relationship included strained, limited, one-way, marginal, struggling, controlled, toxic, horrific, one-sided, very poor, ordinary, no transparency, serf and master, challenging, overloaded with uncertainty.

Twenty-three per cent of respondents indicated that their relationship was good. Words used include professional, very good, good, pretty good, sound, strong, positive, excellent. The remaining 10 per cent of respondents indicated that the relationship was okay or satisfactory.

Table 1. What are some of the behaviours that you have experienced in the last five (5) years, or two contract agreements (whichever is the longer period).

Prices set according to a growers relative performance to another grower, where that performance is determined by factors outside the growers control	61.38%
Requirements for capital investments without any commercial considerations for growers	60.85%
Contract duration that does not allow you sufficient time to obtain a return on investment	59.26%
Prices set with little visibility by growers as to how they were determined, such as how their performance relative to other growers is determined	48.15%
Processors control of growers production and commercial data, including growers costs of production.	46.56%
Unilateral termination clauses (i.e. one party has the power to terminate the contract)	46.03%
Unilateral alteration of contracts by processors	46.03%
An absence of dispute resolution mechanisms	44.44%
A lack of transparency in regard to any financial penalties or fines imposed.	42.86%
Unilateral alteration of prices by processors	42.86%
Requirements to pay indemnities insurance under circumstances which cover the processor	33.68%
Unilateral alteration of contracts by growers	3.7%
Unilateral alteration of prices by growers	3.17%
All of the above	12.17%
None of the above	1.06%
Other	23.28%

Table 2. Do Contract terms have any of the following impacts on your business? Tick as many boxes as apply to your business

Costs increasing at a faster rate than returns resulting in losses	59.26%
Lack of business confidence and certainty to invest in business improvements	46.03%
Retribution (or fear of) from reporting unfair conduct	46.03%
Inability to switch between processors	42.33%
High levels of business risk from price uncertainty and potential financial penalties	38.1%
No flexibility in decision-making	38.1%
Inability to compare prices between different processors	34.39%
All of the above	28.57%
Missed productivity through reduced investment due to uncertainty of contracts	27.51%

Growers outlined some positive elements when asked about the contract or relationship with their processors. However, many growers' comments reflected that the positive elements of the contract or relationship depended on the processors' will and could change if the processor decided. These included:

- Relationships with service personnel (20%)
- Contractual arrangements (17%)
- Communication with processors (16%)
- Payments (16%)

In contrast, 31 per cent of respondents said there was nothing positive about their relationship.

Table 3. What technologies would help to improve price and market transparency for your business? Tick all that apply.

A single source of verified information on prices available to growers in each region	85.06%
Portal to enable a better understanding of how pricing works and the factors affecting chicken prices offered to growers across Australia	64.94%

Table 4. What products or processes would help to improve price and market transparency for your business? Tick all that apply

Processors provide a standard form supply agreement that is publicly available, allowing growers to compare contracts more easily	47.8%
Prevention of any party unilaterally altering or terminating a supply agreement without any negotiation	45.05%
Changes to pooling arrangements, including increasing transparency of the number and types of growers in each pool, prevention of changes to a pool once it is set, and giving some control back to growers	43.41%
An anonymous complaints portal and an independent dispute resolution process	42.86%
Make pricing arrangements clearer, including processors providing minimum prices and specifying how prices will be determined, and when prices will be determined (e.g. before or upon delivery)	35.16%
All of the above	31.32%
Cooling-off period after signature of an agreement, during which growers can cancel an agreement without penalty	28.02%
Other	12.64%

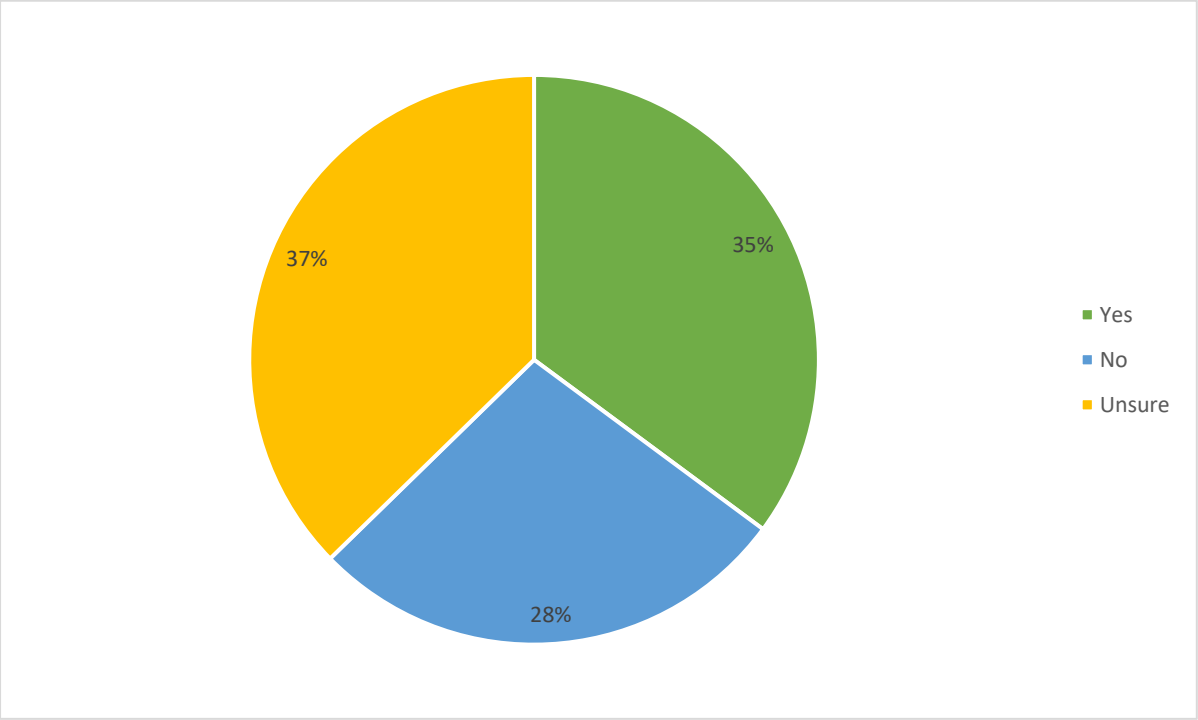

Figure 10. Are you aware of the role of an Industry Code of Conduct and what changes this could mean for your business and the relationship between you and the processor you have a contract with?

Overview of industry based on grower input

Across surveys and all workshops, growers repeatedly outlined a positive sentiment and vision for the future of Australia's poultry meat industry. This vision specifically included a clear view of shared prosperity between growers and processors. This vision guided growers' discussion as they outlined the industry's current structural issues that require significant adjustment.

The "pool" system

The "pool" system was designed and created by processors to incentivise growers to increase their efficiency and performance. Growers are placed in a competitive pool with other growers and paid on performance metrics. These payments form the incentive to growers. Every small group in every workshop identified the pool system as the largest barrier to growth and change within the industry. Overall, the workshop participants rated it the concept that could cause the most division and disharmony amongst growers and the most significant source of tension with processors.

Growers identified many factors that were out of their control and could unfairly penalize their performance in the pool system. This has a direct impact on how much they receive in renumeration. These include:

- Bird genetics and growth rates
- Bird thrift and general resilience to challenges, environmental, physiological and otherwise
- Management actions undertaken by the processor, such as thinning out of densities in sheds and the practice of removing birds early in the growth cycle to satisfy a market requirement for a smaller bird (spatchcocks)
- Disease prevalence in flocks delivered to farms affects early mortality
- Requirements by processors to grow birds to a size that is beyond the genetic capability of the bird to thrive, leading to late batch mortalities, which are reflected in the pool.
- The potential for shortened batch breaks to lead to a residual level of pathogens in the shed that cannot be sufficiently eliminated, leading to a carry-over effect on the next batch.
- The feed quality supplied to the grower can vary between feed mills, affecting the bird's ability to perform to the prescribed genetic growth curves and, thus, the time taken to reach the desired weight.
- Unreliable feed delivery logistics can also mean birds are withheld from feed for long periods, adversely impacting their growth.

Additionally, there are several other issues with the pool system that place growers at a disadvantage:

- Removing growers from the pool payment system for issues beyond their control reduces the financial gain available to growers that perform above expectations as the total amount of financial incentive in the "pool" is also removed.
- The use of mathematical formulae to calculate results that are not seen to reflect the greater level of variance occurring with the bird and its genetic growth potential.
- The use of the growers' results for the last five batches to impose contract sanctions such as reduced placement densities that could remain in place for up to a year, as poor performance in one batch can take up to a year to be discounted from the results and for sanctions to be lifted.
- Different processors use different metrics and mathematical formulae, making it difficult to compare the genetic performance of the bird available to all processors against a grower's performance.
- The age of the breeder flocks can significantly impact chick mortality, which impacts growers' payments.
- There is evidence that some processors have ceased issuing pool results, which only further promotes a lack of transparency in the system they put in place.

- The pool system does not adequately address the different production methods and the variances that can occur between them, I.e., ‘free range’ and ‘barn raised’ are treated the same in many “pools”, even though their growth curves will be different due to differences in dietary and growing conditions.
- There is no ability to benchmark in the pool payment system. Additionally, the processor cannot definitively explain a grower's poor performance, ultimately affecting their position in the pool and, thus, their payment.

Contract terms

Workshops prominently identified that contracts between growers and processors concern growers. The key concern is the contract length offered by the processor and its relevance in the investment made by growers.

Growers must have significant on-farm investment to enter contracts with a processor. This investment includes the sheds used to house the birds, silos to store feed, feeding and drinking equipment and the associated infrastructure, as well as any fit-for-purpose machinery used in the process of rearing chickens.

All participants identified that the existing contract length does not allow sufficient time to write down the debt of these assets. This is because there is no assurance that the processor will renew the contract beyond the existing term. Additionally, there is no certainty that any future contract will contain similar terms and conditions.

Contracts are typically three years with no guarantee of renewal. This creates significant uncertainty for the grower. Growers saw contract terms as out of step with the level of investment required for growers to remain in the industry. This includes any clauses about infrastructure upgrades the processor may require during the contract term.

Renewal negotiations can often take significant time for growers at the end of a contract term. During this negotiation phase, birds are still grown batch-by-batch under existing remuneration, forestalling any price increases for the grower. This means that growers on a batch-by-batch proposition are being denied any increase in remuneration or conditions that may be due to them under a re-negotiated contract.

Growers feel inadequately prepared to engage in contractual negotiations with the processor. This is due to many factors, such as contractual literacy, financial literacy and negotiation skills. However, they also feel financially compelled to service the debt required to enter or remain in the industry.

Many growers have engaged legal representation to assist them in contract negotiations individually. However, growers questioned whether this representation effectively got a fairer contract given the cost-benefit.

Growers viewed contracts as typically written to favour the processor, with penalty clauses written in such a way as to apply to the grower but minimal penalty clauses applicable to the processor.

Enforcement of penalty clauses in contracts was identified as a further issue. Processors can enforce penalties on growers, such as reduced stocking rates. However, growers cannot enforce penalties upon processors for any breaches of contract. This is primarily due to the imbalance of power in the industry.

There are currently no readily accessible dispute resolution mechanisms built into contracts. This is seen as a significant barrier to growers being able to negotiate with processors on potential breaches of clauses.

Many contracts contain clauses requiring higher than industry-standard welfare but fail to acknowledge and recompense the grower for the increased cost of complying with these

clauses. Furthermore, contracts are not written to allow for CPI adjustments on capital expenditure, eroding a grower's incentive to invest in their farm because the cost of installing new infrastructure rises with inflation, but that is not recognized within the contract terms.

Contractual Annexures such as Biosecurity Manuals or Broiler Manuals (which dictate to growers the parameters under which they should be operating to produce the bird required by the processor under the contract) can be arbitrarily altered by the processor without any consultation with the grower and have the potential to expose growers to contractual breaches, as these Annexures are viewed as a part of the contractual agreement.

Collective bargaining

Many growers raised issues with collective bargaining. Growers saw significant issues with collective bargaining, which had a detrimental impact on the industry. This includes:

- The ability for processors to individualise contracts between growers, imposing contract clauses on some growers but not others. This leads to further confusion and division within the industry, as growers cannot discuss contract terms or agreements outside of an ACCC Collective Bargaining Authorisation.
- Different contractual end dates further erode growers' ability to collectively bargain, even under the appropriate exemptions.
- Processors' active avoidance of collective bargaining groups in favour of individual negotiations dilutes the opportunity for all growers to be ‘on a level playing field’.
- The desire for some processors to move to a ‘national contract’ with standard form clauses further erodes the ability of state-based grower groups to collectively bargain and are likely not be flexible enough to reflect any state and regional variances that could have a detrimental effect on the terms and remuneration available to growers.

There are also concerns about the impact on individual grower representatives who conduct collective bargaining. Growers reported multiple instances where individuals and their contracts are isolated from the collective bargaining outcomes to disincentivise them to engage in the collective bargaining process. There is also evidence that processors target individual growers who engage in negotiations through the avenues the processor influences. This includes placement densities, inferior bird genetics, and feed quality. This either rewards or penalizes those individuals acting for their collective bargaining groups.

Remuneration

Growers across Australia were concerned about increased production costs due to rising input costs. Inputs, including gas, electricity, bedding, wages and insurance, have all risen in previous years. Despite this, the price received by growers has not increased accordingly. It was noted on multiple occasions across all workshops that the increase in CPI has not been recognized and passed onto growers in a reasonable timeframe. Ultimately, the increasing cost of production is seen as a barrier to the future existence of a viable industry.

These concerns were expanded through the workshops. This included specific examples, such as:

- Contracts commonly restrict CPI increases to either 60 per cent of CPI or 2 per cent (whichever is the lesser). This does not adequately reflect the cost increases that growers have been exposed to over time and sees growers' increases in remuneration limited to the inputs required to grow out a batch. Growers also dispute using the CPI as the primary inflation metric and believe that there are more appropriate measures for businesses with models that more accurately judge the cost of production increases.
- Cost and availability of insurance for infrastructure. In recent years, insurance underwriters' appetite for risk has decreased, and the cost associated with insuring sheds has escalated. Insurance costs are now up to 300 per cent higher than pre-pandemic levels.

- Placement of additional birds, either through human error or by design, requires growers to commit additional resources to raising the birds. However, there is no payment for those birds and the resources they consume, as payments are made on the number of birds at the end of the batch.
- Growers are routinely asked to comply with higher standards of infrastructure and management practices required by third-party accreditation schemes. However, no remuneration increase is offered to offset the additional costs incurred by growers.
- The overall efficiency with which growers can produce a batch has increased over time, with advancements in litter management, heating and cooling technologies and overall shedding and infrastructure. However, there has been no commensurate increase in remuneration to reward the efficiency increases.
- Processors requesting upgrades to infrastructure or labour requirements over and above what is contained in the contract with no contract annexures required to remunerate for the requested upgrades.
- As a result of the increased infrastructure investment and the decreasing returns, farm values have decreased. Those looking to exit the industry are left with an unsaleable asset due to low return on investment and the high capitalization cost of the purpose-built infrastructure.
- The “model farm template” used by many processors to calculate the adjustments in fees paid to growers due to cost increases is seen as outdated and not reflective of the modern business environment where growers operate. It is seen as not being reactive enough to change business conditions, and there is a significant lag time between when costs of production rise and the model reflects a proportion of that rise. This leaves growers in a perpetual ‘catch-up’ state with the remuneration offered, which causes a deterioration in business sentiment and less ability to invest in the business proactively.

This poultry meat supply chain sector is currently grappling with the issues raised above. Because of this, combined with the contractual challenges highlighted earlier, many growers view their industry sector as having a disproportionately high risk of stranded assets.

Bird quality and animal welfare

Bird quality and welfare were also raised as concerns for growers. Several key concerns identified included:

- Inconsistency in the quality of the birds received from one batch to the next.
- The increasing presence of morphology issues.
- There is no compensation for poor quality, low thrift birds who do not perform to breed standard and/or are subject to early mortality.
- Different bird breeds with different growth curves are included in the same batches and, therefore, included in the ‘pool’ system, leading to greater disparity in performance between growers.
- Animal welfare standards allow for prioritisation of profit over genuine care for birds.

Bird Quality Issues

Throughout workshops, growers expressed concern about the quality of birds placed on farms. The growers believe that as demand for chicken meat increases, processors are widening the parameters for quality control to increase output. This includes shifting parameters such as parent flock ages (layer birds that are too young or too old have poorer egg quality), egg quality (greater acceptance of the marginal quality eggs), and hatchery culls (less marginal birds being culled). This ultimately decreases the quality of the chick delivered to the grower, which has broader implications for growing fees paid.

As bird genetic resilience deteriorates, and birds must be grown longer to reach market specifications, their genetic capability to thrive for the additional time is compromised, resulting in late batch mortalities beyond growers' influence or control. Service personnel often advise growers to cull birds due to the increased prevalence of stunting and runts

apparent at arrival onto farms. These late batch mortalities affect the numbers of birds processed, feed conversion ratios, efficiency indexes and, therefore, a grower's ranking in the 'pool' system. The additional bird deaths contribute to the reduction in the grower's remuneration as the birds have still utilised heating/cooling, water, feed and bedding, but the grower will not receive payment for those birds in the 'pool' system as they are not contributing to any payment the grower would receive for that batch.

More specific issues that growers raised regarding the quality of birds received in their production systems included:

- Carry-over infections from donor flocks and incubation and immune challenges in day-olds can result in high early (pre-7 day) mortalities.
- Bird morphology can be influenced by parent flock age, with leg issues in birds leading to mobility issues and low feed conversion that isn't apparent until birds are nearly fully grown.
- Inconsistent chick quality arising from different aged parent flocks creates a disparity in growth across a batch, and the resultant large variation in the flock is borne out in results, generally to the detriment of the grower.

Animal welfare issues

The cross-over of bird quality issues listed above with animal welfare issues is worth considering. Many workshop attendees believe profit is now prioritised over genuine bird welfare within the industry. Growers have identified that access to vets and service personnel is limited, with any results from grower-initiated investigations typically not made available to the grower during the batch under investigation, precluding the grower from being able to take any management steps to correct issues before the output of that batch.

Growers also raised concerns about biosecurity on several occasions. Growers identified that catchers can be non-compliant with biosecurity directions, and basic protocols like footbaths are not used. Contaminated litter has been seen entering farms through boots, machinery, and pick-up equipment such as modules and drawers. Growers have suggested that the lack of biosecurity at pick-up or placement could be a vector of disease carry over between batches and between farms. Cases have also been witnessed where partly filled transport vehicles have arrived at farms with birds already on board, and there is a potential for the spread of biosecurity risk from farm to farm.

Communication

Many growers identified communication channels between growers and processors as a significant source of tension and business relationship breakdown. This included the absence or breakdown od consistent communication channels between growers and processors.

Growers raised communications regarding operational issues such as catching crew behaviour and biosecurity breaches. Growers indicated that when these concerns have been raised, no actions are often taken, and no response is given to the grower.

This has led to a reluctance by growers to speak to catching crews about their professionalism and behaviour on site, particularly as they have been known to continue to disrespect the grower and property after they have been spoken to and even to escalate their behaviour.

Grower participants in workshops also had significant concerns such as batch breaks, turnaround times between batches, and the resultant pressure that is placed on growers to have sheds ready for placement go unacknowledged and unaddressed as processors seek to maintain throughput to maintain market share and contractual obligations. A lack of clear and transparent communication from the processor on the issues associated with scheduling and turnaround times creates stress on the grower that could be avoided.

Growers identified that contact between service personnel, vets and growers is sporadic. Growers acknowledge that at an individual level, the vets and service personnel have a good interpersonal relationship with growers; their level of engagement with growers is symptomatic of a wider labour shortage in the industry. This labour shortage places undue pressure and stress upon these staff, resulting in less than satisfactory outcomes for the grower.

Constructive feedback to processors from growers is seen to be ignored or refuted without cause or discussion on the problem identified. This leaves growers feeling isolated and undervalued. Growers also report being targeted through their business relationship with the processor for bringing issues that are not the grower's fault to the processor's attention.

Negotiations on contracts and other aspects of the processor-grower relationship are seen as one-sided, favouring the processors, and there is no acknowledgement or understanding portrayed to growers regarding their individual or collective situations. Indeed, many growers were quick to label the relationship between processor and grower ‘like a dictatorship’ based on the lack of constructive dialogue they can have with the processor.

The ”pool” system checks undertaken by some state-based grower groups are seen as an opportunity to provide real-time feedback to processors about issues. These are an attempt to work towards a solution collaboratively yet were also identified as an area of the communication relationship with the processor that results in very little progress, as the issues are uncovered and communicated, The staff employed by the processor are either overwhelmed with the issues or are powerless in their position to effect any change.

There is also a general perception among growers that the processor sees themselves as blameless. That is any issues that arise during a batch result from the growers’ actions and not because of any action or consequence of the processor.

Importantly, growers are not generally invited into information about the processor’s role and position in the market and their plans for the business in the future. This includes but isn’t limited to expansion, changes to the business, personnel, or strategy. Growers feel that being left out of knowledge about the processors' general role, strategy, and direction gives them little hope for the future of their position within the company and their importance to the overall direction of the industry.

This general lack of communication between the parties has led to an erosion of trust from growers that the processor will listen to, let alone act on issues raised or solutions offered.

Mental health

Throughout all the grower consultations, there was one clear message that shone through regarding grower health and wellbeing, and that was the physical and mental strain that growers are placed under by a variety of causes, including, but not limited to;

- The mental strain of ‘financial tight-rope walking’ as growers juggle cashflow to pay staff or contractors for shed cleanouts, repairs, maintenance bills and other expenses.
- The mental toll placed on growers who are faced with deceased livestock daily, and the workload in handling and disposing of deceased birds, knowing that there may be steps that processors could take to minimize bird losses.
- The mental toll of contract negotiations, fee review discussions, and the required preparation.
- The mental and physical issues associated with shortened batch breaks and an inability to rest and recharge before the next placement lead to the strain arising from a lack of work/life balance for growers.
- The mental strain associated with a potentially antagonistic relationship with the processor and the recognition and realization that it does not have to be such. Growers are willing participants in the solution-seeking process. However, it seems that processors are reluctant to engage in this aspect.

Sundry feedback

While the issues discussed above were raised in a high frequency and consistently across all workshops and survey interactions, growers raised other issues throughout the consultation process that are worthy of mentioning. These include issues such as:

- Mixed sex distribution upon placement in the turkey industry has impacts on grower health and wellbeing, as animal behaviour in mixed-sex shedding causes an increase in management issues that would not exist in single-sex placements. Processors have not been willing to engage with growers on alternatives to mixed-sex placements.
- The short turnaround between batches and the carryover of pest burdens, disease and bacterial loads due to an inability to give the infrastructure adequate time to 'rest' and for any bacterial loads still present at cleanout to reduce to below pathogenic levels.
- Issues with placement scheduling and pickups affect growers' ability to adequately prepare and ensure that the infrastructure and birds are appropriately available for delivery and/or pickup.
- Issues with counting of dayolds at placement from hatchery and issues with counts of birds at pickup. Disparities in these greater than 5% can be raised with the processor. However, the paperwork is typically adjusted, and the grower is just expected to accept the variation despite the issues that can cause results after the batch.
- Operational issues arise throughout the batch, and inaction occurs from the processor or contracted parties (such as pickup and feed delivery crews).
- The physical strain on an ageing grower demographic of growing a batch and then returning the sheds to an acceptable state for the placement of the next batch, which can be as short as 3-4 days, offering no opportunity for growers to physically recover from the requirement to be on the farm for the duration of the entire growth cycle.

Industry positives

Throughout all workshops, participants were asked about what they considered to be the positive aspects of working in the poultry meat industry. Working in the industry has benefits that other agricultural commodities cannot offer. This included receiving a regularly timed income not dependent on seasonal conditions or prices at a sale yard. Income is consistent and relatively stable throughout the year, allowing for financial forecasting and planning based on accurate figures.

With consumer demand for chicken consistently rising and predicted to continue, there is relatively good market security. It is also perceived as a more sustainable source of protein compared to beef or lamb, as the feed conversion ratio is higher and water requirements are less, leading to a lower environmental footprint than other animal-based food products. This could place the industry at a competitive advantage if market sentiments shift toward lower carbon emission industries in agriculture.

Processors are also seen to be spending and investing significantly in infrastructure, which can give growers a good sense of long-term security. Research and development has also led to a rapid increase in productivity.

Generally, growers view the industry as being a predominantly 'family farm' oriented business, and that sits well with the cultural approach of the sector. Equally, though, corporate growers are acknowledged and welcomed into the industry.

Opportunities for industry

Growers were asked in consultations about their views on the opportunities that are present in the industry. The major themes emerging from this discussion could be seen as directly inverse to the issues that were identified as present in the industry and are listed below:

- A fairer and more transparent incentive system (aka “pools”).
- An increase in communication from the processor to keep growers informed.
- An increase in industry transparency.
- Processor-based collective bargaining groups.
- Processor accountability for issues they can control.
- Greater collaboration and viewing of growers as partners in production, rather than the current “master/serf” relationship dynamic that exists.
- Continued growth of chicken consumption.
- Opportunities to market the poultry industry, its environmental and animal welfare credentials, and drive consumption.
- Employment opportunities in a range of roles in the industry, from research and development to farming roles.
- Improved compensation mechanisms include growing fee remuneration and infrastructure investment payments, providing expansion opportunities.
- Longer-term contracts to reflect the amortization of infrastructure costs over a longer term with security.
- Reducing stress on growers leads to better mental and physical health outcomes.

Poultry meat growers- the ‘perfect’ industry

“Blue sky thinking.”

The workshops devoted a considerable amount of time, prompting the attendees to think about how they thought the industry should be and what they would like to see in the poultry meat industry if they were participants in a “perfect” market with ideal conditions.

The growers' first discussion point was altering or eliminating the “pool” system and ensuring that growers were paid a fair income for their role in the industry. There were discussions about the potential changing of the parameters used within the pool system to accommodate the current trend for larger live weights, differing bird genetics and eliminating as many variables within the pool system as possible to ensure its fairness.

Growers saw themselves as being in a partnership with processors, with access to the same market information (providing commercial sensitivities are maintained), allowing them to have some surety of their role in the industry and confidence that their business models would continue to be required.

Supply chain transparency was a crucial piece of the pathway to an industry performing at its peak. With an appropriately transparent supply chain, every aspect of the supply chain was aware of the opportunities for improvement, the blockages and the components that were working well. In growers’ opinions, this allowed everyone to make sure that everyone else in the supply chain was treated equitably, allowing the industry to prosper and for consumers to ultimately benefit.

Greater communication from processors was a key theme that emerged from the workshops, as growers felt that by being communicated to, they were being involved in and valued in their contributions to the processors' business model and the industry generally.

The industry also saw a heightened need for fee adjustments not to be limited to a proportion of CPI, as they saw this as the greatest barrier to financial stability, with many growers concerned that their own living and business expenses are subject to the full CPI increase, but that their income is limited by contract to a portion thereof, with current financial outlooks bearing evidence to an increasingly widening gap between the two, adding to the mental stress currently experienced in the industry.

Longer-term contracts were identified as a key desire for the industry, as they provide surety of income and allow for the costs of infrastructure investment to be spread over a longer period, thus lessening the burden on the business's balance sheet.

A return to collective bargaining was seen as a formative opportunity to redress the current power imbalance in the industry. The authorizing of processor-based grower groups to collectively bargain and to seek out terms in contracts that align all growers was seen as a positive opportunity to redress the power imbalance that has existed since the abolition of the Poultry Meat Industry Regulations and the subsequent banning of collective bargaining without authorisation in the Australian Competition and Consumer Act 2010.

In an ideal environment, bird quality and animal welfare standards would allow for a genetically robust bird performing to type, ensuring that the variances affecting a grower and the batch quality would be minimized, providing a more standardized batch payment.

A highly functioning relationship between processors and growers would see an improved level of respect and appreciation by each party for the role that the other plays in the supply chain. This would create a better attitude by all sectors of the industry towards other sectors and foster open communications and robust relationships that can withstand the rigours of any potential conflict within the supply chain.

Shared infrastructure investment was seen as a way to secure the industry's future. Growers currently cannot afford to invest in more shedding, as the returns are not financially prudent, whilst processors struggle to meet the domestic demand for chicken, requiring more shedding to be constructed. With prices spiralling for infrastructure development and construction (recent estimates shared by a participant put the construction cost of a shed at a conservative $15 per bird capacity), a shared investment model may be the opportunity that both sectors of the supply chain need to satisfy the growing market requirement for chicken meat.

Growers were also united in their desire to involve third-party accreditation groups and animal welfare organizations throughout the supply chain. This was seen as the most transparent way to enable these groups to see the impact of the regulations and accreditation schemes on the supply chain. It also provides the opportunity to work with them in providing a solution to the challenges and limitations of the supply chain. It offers an opportunity to examine the potential financial redress that could be distributed by the income generated by these schemes and standards throughout the chain to mitigate any marginal costs incurred at every stage.

Growers' well-being and mental health was identified as a key aspect in any future high-performing industry. Trust and feeling valued for their role in the industry were seen as crucial for growers’ well-being. The fair and equitable supply chain, which would see them renumerated fairly and with greater certainty and security of tenure, would contribute significantly to the positive mental health of growers in an industry performing at its peak.

Ultimately, growers were united in their desire for greater remuneration for their services. Whether this be through a fairer fee review mechanism, a different and fairer “pool” system, or greater grow fees established up front in contract negotiations, all those in attendance at the workshops agreed that increased income would allow them to hire staff to allow them to take breaks, take the stress of cashflow management away, and offer an improved return on investment. Ultimately, greater remuneration would allow proactively using that income for infrastructure expenditures such as building more growing capacity and securing their position in the marketplace, further proving their business a valuable asset and business model available to a processor.

It was interesting to note that at this point in the delivery of the workshops, the industry's opportunities for a code of conduct had not yet been broached nor explored. The workshop format explored the industry's current state and what growers would like a perfect industry to look like. Nevertheless, a strong desire emerged throughout the exploration of the ideal Poultry Meat Industry to explore a Code of Conduct and elements of it that could be present in an industry that was performing at its peak. Engaged growers had been investigating other industry Codes of Conduct in preparation for their attendance at the consultations.

A possible poultry meat code of conduct

In designing the workshop content, it was necessary to educate growers on what is a Code of Conduct, the types of codes available to the industry (voluntary or mandatory), their respective powers, what it can deliver for the industry, what its limitations are, and allow growers to process the information in the context of their industry and decide if a Code of Conduct is the way forward for Industry.

As mentioned above, many growers came armed with knowledge of the mechanics of a Code of Conduct, how it works and what it can do, and many did not. It was, therefore, essential to bring everybody up to the same level of knowledge regarding a Code of Conduct.

The most recent example of a Code of Conduct that growers would potentially be familiar with is the Dairy Code of Conduct. It was decided that this was the most relevant Code to expose growers to. Growers were exposed to two viewpoints on implementing the Dairy Code of Conduct, from both a producer's and an industry representative's point of view.

This was designed to allow participants to take away as much information from a similar code and how the Dairy Code of Conduct elements may work for the Poultry Meat Industry.

Growers were then tasked with examining the elements of the mandatory Dairy Code of Conduct and taking all that is challenging within the industry, all of the opportunities for improvement, and the blue sky thinking that they were asked to do to formulate what a perfect Poultry Meat Industry and supply chain would look like and examine the opportunities for a voluntary Code of Conduct for the Poultry Meat Industry.

Growers saw no value or potential for a voluntary code of conduct to address the market power imbalance in the industry. Given the issues within the industry and previous attempts at solving them, a voluntary code would not be the appropriate regulatory mechanism to try and address the inequities the industry faces. In many growers' words, "a voluntary code won't be worth the paper it is written on".

A mandatory Code of Conduct was seen as the most appropriate mechanism to drive change within the industry. Growers identified the following applicable mechanisms to address the market power imbalance:

1. **Good faith provisions**
   A key requirement in a code includes 'good faith' provisions concerning any contractual negotiations that occur under the Code. This would ensure that both parties' needs were considered in the contractual negotiations. A fair and equitable contract without fear of reprisal would be of enormous benefit to the industry, as growers are currently fearful about speaking up about breach of contract for fear of reprisal.

2. **Effective dispute resolution mechanisms.**
   Growers saw the inclusion of dispute resolution mechanisms such as independent mediation and arbitration as integral to the success of the Mandatory Code. Any engagement with the processors about contracts needs to be independent to avoid the possibility of reprisal or retribution on any grower who raises an issue in this regard.

3. **Review mechanism.**
   The ability to review the effectiveness of the code after a period of time in operation is critical to the long-term success of a mandatory code, and the ability to correct the parts of the code that are not as effective as they could be and to insert other provisions as necessary was seen as an important part of the continued development and improvement of a Code for the Industry. Growers were not specific on the timeframe for the review. However, most were suggested within the first few years of its inception.

4. **Penalties are imposed for breaches of the contract.**

This was the aspect of the development of the code that was of most interest to the growers, as currently, existing contracts can see processors penalise growers for breaches of contract, but it is very difficult for a grower to successfully penalise a processor for a breach of the contract, no matter how small. Feedback also suggested that fines, such as percentage-based, should be commensurate with turnover. This would ensure that the penalties imposed are of significant enough financial impact to substantially deter breaches.

5. **An independent review and oversight of pools by a third party agreeable to both processor and grower.**
   This was seen as a significant step to reduce the confusion of the terminology and mathematical formulae used in the pools and to ensure that results were fair and that reprisals and disadvantages by way of position in the pool were not due to manipulation of the inputs by the processor.

6. **Minimum contract timeframes.**
   It was a theme of the feedback from growers that the timeframe on contracts along the supply chain should be consistent. For example, suppose a retailer and a processor have a ten-year contract. In that case, the contracts for processors and growers should reflect a similar longevity. This further seeks to level the market power imbalance. Furthermore, contract lengths should consider the investment that growers have made into infrastructure and be reflective of that.

7. **A commitment to include an uncapped real measure of inflation in contract negotiations and a review of the model farm template for in-contract price adjustments.**
   The single largest discussion point alongside the “pool” system is the model farm template allowing in-contract price adjustments. The major issue from the growers’ perspective is the capped CPI figure, which, in the current climate, is significantly outstripped by the actual increase in the cost of goods and services in real terms.

Processor companies

Overview of processor stakeholder engagement

NFF and NSW Farmers attempted to engage with processor companies to gain their insights into the current state of the Australian poultry meat industry and issues of competition and market transparency.

The NFF and NSW Farmers used available information and contact details to invite representatives of processors to participate in this project to ensure their perspectives were effectively considered. The NFF and NSW Farmers contacted processor representatives to conduct a targeted survey and participate in one-on-one meetings with NFF and NSW Farmers staff. An overview of attempted contact is as follows:

1. **Baiada Enterprises**
    - NSW Farmers email sent to S Camelleri – 4 August 2023 04/08/23
    - Response received (agreed to talk, but timelines for the meeting didn't line up) and NSW Farmers follow-up email sent – 21 August 2023
    - NSW Farmers follow up email sent - 23 August 2023
    - NSW Farmers follow up email sent - 30 August 2023
    - Email response received from S Camelleri advising that Chris Turner represents their views and that all communications must be channelled through him and APIA – 30 August 2023
    - NSW Farmers email sent responding to the above – 30 August 2023

2. **Turosi**
    - NSW Farmers Email sent to J Kopanica 10/08/23
    - Email sent to M Heintz 23/08/23
    - Follow up email sent 30/08/23

3. **Inghams**
    - NSW Farmers staff email sent to Suzy Klein - 23 August 2023
    - NFF staff email sent to A Reeves - 30 August 2023
    - NFF staff email response received by A Reeves - 31 August 2023
    - NFF staff email response to A Reeves by K Denton - 31 August 2023
    - NFF staff email response to K Denton by A Reeves agreeing to a future meeting - 31/08/23

4. **Cordina**
    - NFF staff email sent to L Cordina – 30 August 2023
    - Brief verbal discussion with J Cordina during a chance meeting with NSW Farmers staff on 20 October 2023. J Cordina informed that APIA and Chris Turner represent their views. No other information was garnered nor proffered.

The NFF extended this invitation to the Australian Poultry Meat Industry Association and Mr Chris Turner—the processor's representative on the Advisory Committee—to participate on behalf of processors. These invitations were declined.

The processor survey was developed in consultation with Chris Turner to ensure all questions were relevant to the perspectives of processors. This survey is in Appendix 3. No processors completed the survey.

Australian Poultry Industry Association perspective on poultry meat industry

Through this consultation process, the NFF also extended invitations to the Australian Poultry Industry Association (APIA), the representative organisation for poultry processors,

to participate on behalf of their members. APIA wrote to the NFF about this project on two occasions. However, it sought to criticise its merits rather than the substance of issues within the poultry meat supply chain.

When pressed on the project's substance, APIA said, '[APIA] members do not see any need for a Code of Conduct or see any value to be gained from it either for growers or processors'.[73] Further, a Code of Conduct 'may result in an artificial compliance burden being placed on the industry which can deleteriously affect its productivity and performance.'[74]

APIA's communication with the NFF is in line with the views of processors at DAFF's poultry meat workshop on 24 August 2021 and 7 October 2021. At these workshops, processor representatives expressed no evidence of a market failure relating to price and market transparency.[75]

At these workshops, processors explained they felt it was unclear how a code of conduct relates to price transparency. They noted that introducing a mandatory code is a serious regulatory step that was considered an overreach in this process. They felt there is no demonstrated market failure to support developing a code of conduct, noting that their experience for demand and investment from new and existing growers suggests the market is working. There was a perception that a code of conduct would risk driving up costs in the industry. Due to chicken meat being Australia's most popular protein, any price increase from over-regulation would be detrimental to the industry and consumers.[76]

Processor perspective on the poultry meat industry

Only one processor—Ingham's—accepted the NFF's invitation to engage with the NFF as part of this project. The following section reflects the information Ingham's provided to the NFF.

Ingham's has been consistent in expressing its view that price transparency between growers and processors is not an issue in the poultry meat industry or for chicken meat growers and that a Code of Conduct would be of no benefit.

The poultry meat industry is fundamentally different to other Perishable Agricultural Goods (PAG) industries in that growers do not have an economic interest in or participate in the risk or reward of poultry production and supply, as the grower never owns the perishables goods. Growers receive fee for service, reflective of shedding and husbandry services they provide. The processor always maintains ownership and control of the biological assets and accepts all the economic risks of ownership.

There have been suggestions that the whole value chain for poultry meat should be examined so returns referable to the wholesale or retail price for chicken can be linked back to grower returns, akin to other PAG industries. Inghams does not agree with this proposal because the wholesale and retail price for chicken meat has no relevance to grower fees and returns and should not feature in any price transparency considerations between growers and processors. Further, it is Ingham's understanding that growers would not want their fees to be set by reference to the wholesale or retail price of chicken, or to accept risks associated with market volatility including the impact of changing feed prices or supply chain disruptions on returns.

It is for these reasons that price transparency between growers and processors is not an issue for the poultry meat industry.

[73] Kite V 2022, NFF Project 'Improving market transparency in Australian poultry meat supply chains' project, Letter to Ash Salardini.
[74] Wu M 2023, personal communications, 1 September.
[75] DAWE, 'Chicken meat industry third workshop 7 October 2021: Workshop communique,' Improving market transparency in perishable agricultural goods industries, 2021, p 1.
[76] Ibid.

If the NFF review concludes and recommends that market price transparency needs to be addressed, then it must be in the context of grower input costs, fees, earnings and returns and not referable to the wholesale or retail price of chicken meat, as noted, growers do not participate in the risk or reward of poultry production and supply. Transparency between processors and growers could however be addressed through growers opening their books so processors could understand if fees earned by growers are reflective of their input costs and returns across regions and states.

The structure and circumstances of the chicken industry are also such, that a Code would not provide any benefit to growers. The industry is highly competitive and is growing efficiently, providing the most affordable animal protein on a sustainable basis while delivering appropriate returns to all participants in the process. A Code of Conduct would add cost and inefficiency with little or no benefit.

Inghams also provided specific feedback on elements of the poultry meat supply chain. This includes:

1. Price Transparency in the chicken industry.

Price transparency of wholesale / retail prices of chicken is not relevant to chicken growers.

Growers do not own or sell chicken and do not have any economic or other interest in the proceeds of sale of chicken meat. The NFF's desire to examine whether there should be a value transfer to growers from the sale of chicken meat is not appropriate within the context of the poultry industry. Growers do not take part in the risk or rewards associated with poultry production and supply; they provide sheds and husbandry services to grow chickens, and they are paid a "toll" fee for doing so.

Importantly, chicken growers would not want their fees to be based on wholesale or retail chicken prices, or to factor in risks associated with volatile feed pricing or supply chain disruptions as part of their fees and returns. This would add significant volatility and risk to chicken grower returns, which are very low risk in the context of grower returns in other PAG industries and have been very stable for many years.

If it is concluded by the NFF that price transparency between growers and processors is an issue within the chicken industry, then to be of relevance to growers it must it relate to their input costs, fees, and returns, rather than referable to wholesale or retail chicken prices. Transparency in this context could be assisted by benchmarking grower returns. Growers would need to open their books and accounts to demonstrate their returns for benchmarking between (1) different States (2) small vs large farms (3) individual operators vs corporate operators.

In conclusion, price transparency could be achieved by establishing benchmarks for the costs of grower inputs including land, sheds, equipment, labour, water, utilities, litter, and insurance. Those benchmarks could then be compared on a region by region / State by State basis.

2. A Code of Conduct to assist with price transparency.

It is clear to Inghams that a Code of Conduct is not needed for price transparency. A Code would add unnecessary administration to both growers and processors. It would divert resources and add cost and inefficiency with no associated benefit.

3. Examination of a Code for reasons other than Price Transparency.

As noted, Inghams does not believe price transparency is relevant to grower fees unless it is in the context of growers opening their books and sharing how their returns are calculated

based on the fess they are paid, the input costs they incur, and he overall returns that they earn.

The poultry meat industry is fundamentally different to PAG industries in many ways. Inghams growers invest their capital in new farms and build shedding and infrastructure after receiving a long-term contractual commitment from Inghams of at least 10 years, locking in very stable and predictable fees and returns subject only to limited qualifications. The fees are locked in for the entire term and are protected by annual fee reviews which consider input cost changes so that returns are maintained throughout the term. No other PAG farmers have this type of stable arrangement guaranteeing returns over a long period. Chicken growers also do not own or accept any material risk associated with the livestock, such as disease or mortality risk, with Inghams bearing the impact of these risks.

Growers are also not materially exposed to other general agricultural risks in relation to the livestock such as bush fire, flood, or drought. Where these types of events occur grower returns are not materially affected. They are also not affected by supply and demand imbalances, or by price volatility so that if prices fluctuate, grower returns stay the same. In the context of recent two years of steep increases in feed prices, and the timing lag for these to be reflected in wholesale or retail prices, grower returns have been unaffected, while Inghams returns were directly and adversely impacted.

Finally, growers are not exposed to any uncertainty with respect to supply as they have a locked in contracts and locked in fees obliging Inghams to place and collect birds over the term of the contract for the stable returns which are also locked into the contract.

None of the elements in the relationship between Inghams and its growers referred to above are present for other PAG farmers who are exposed to disease and weather risk, feed cost volatility and market supply and demand and price volatility.

These differences are fundamental in understanding why price transparency is a very different concept in the poultry meat industry. While price transparency may be an issue for dairy, beef, or sheep farmers, or in the wine or horticulture sectors, it is not an issue for poultry growers.

It is imperative the differences between the chicken industry and other PAG sectors is acknowledged, and the direct effect of this which is to make price transparency between growers and processors an irrelevant concept to poultry growers.

As noted above, the only price transparency relevant to poultry growers relates to their input costs relative to their fees and overall returns, and the reasons for variations between regions and States. Furthermore, the concept of a Code of Conduct relating to price transparency (or otherwise) is fundamentally different in the chicken industry.

- The chicken industry is highly competitive and working efficiently obviating the need for a Code.
- The chicken industry has been producing Australia's best value and most popular land-based protein for some years. The overall industry continues to enjoy an average annual growth rate of circa 3 per cent consistent with the last 30 – 40 years. All participants continue to earn reasonable returns while delivering the lowest cost animal protein to consumers. It should also be noted that chicken is by far the most sustainable of all the land-based proteins.
- It should not be taken for granted that the chicken industry produces value for money, sustainable protein while at ate the same time delivering excellent returns to growers in the context of other PAG farmers.
- Good stable grower earnings and returns are evidenced by the ongoing expansion and growth by current growers and ongoing demand by new entrants to develop growing operations. The ability of growers to earn consistent, stable, and sustainable returns demonstrates the competitiveness and efficiency of the chicken industry.

- Based on the dynamic and growing industry there is no need for a Code is needed to address any perceived issues that the NFF may believe exist.
- It is Inghams view that the ACCC considered and rejected a Code in favour of the recommendations and actions set out in the PAG report. The ACCC indicated that "*Imbalances in bargaining power and market failures arise in most markets across the economy and their presence alone does not warrant regulatory intervention. Unnecessary intervention can add costs for market participants and can dampen innovation*".
- This was reinforced by Mick Keogh Deputy Chair of the ACCC in an address to the NFF conference on 11 June 2021 where he stated:

While a Code is unnecessary in the context of price transparency, it is also appropriate to note that there is no general case for a Code of Conduct.

" *… imbalances in bargaining power and related weak competition generally does not justify regulatory intervention unless the level of harm arising is significant and is greater than the likely cost of regulatory intervention."*

Inghams does not believe there is significant weakness in the negotiating position of Inghams growers or that a Code is justified on any basis, including that it would impose significant cost for little or no benefit.

Retailers

Overview of retailer stakeholder engagement

In addition to consultation with growers and processors, NFF and NSW Farmers also consulted with other players in the supply chain, namely the supermarkets (noting that feed and feed mills and genetics are either owned by or directly controlled by the processor).

NFF and NSW Farmers invited Coles, Woolworths and Aldi to participate in one-on-one interviews to discuss their perception of the poultry meat supply chain. These retailers were also offered to complete a survey outlining the views of the supply chain. No survey responses have been recorded.

There has been one retailer interview for this project. The interview was designed to engage fully on the project and to elicit large amounts of discussion over a similar length of time as was devoted to each of the grower engagements. However, due to scheduling issues and time constraints, the discussion with the retailer was truncated, so feedback and reporting may not be as fully explored as the grower engagement aspect of this project.

Discussion with the retailer elicited the following points:

- An openness to potentially signing up to a mandatory code and a clarification that this retailer is certainly open to committing to a mandatory code for its part in the supply chain.

- While contractual terms with processors are generally less than 5 years, the relationships that underpin those contracts extend across multiple decades, indicating that there is a longevity of relationship that is not in jeopardy, and ensuring the security of supply will extend beyond contractual terms.

- Cost increases are passed on to processors, but there is no visibility beyond the processors point in the supply chain to ensure that the increased pricing is passed on through the lower end of the supply chain.

- Retailers require their suppliers to behave ethically, but that does not extend to the commercial agreements and behaviours that exist between the processor and the grower. They have no visibility beyond the processor of the supply chain.

- This retailer was very open to hearing from growers who felt they were being treated unfairly and was genuine in taking their contractual and social obligations for all aspects of the supply chain very seriously.

PART 4 – Potential Policy Solutions

Policy analysis and stakeholder engagement has identified a number of harmful economic practices that are occurring in Australia's poultry meat supply chain. As discussed previously, these include:

- No alternate processor in their region
- Little to no ability to compare price offerings between processors when there is more than one in a single area.
- A lack of fair negotiation of contracts between processors and growers.
- Deliberate undermining of growers' desire and attempts to collectively bargain.
- The requirement for infrastructure investments to receive a contract with no additional remuneration to reflect the costs of required upgrades
- Contract lengths that do not allow sufficient time to write down debts for assets required to receive the contract.
- Contract price increases that do not adequately reflect increased input costs.
- Refusal to honour clauses within contracts
- A genuine fear of commercial retribution for participating in commercial retribution or accessing rights under the law, such as challenging the use of unfair contract terms or unfair business practices.

While acknowledging the processors' perspectives on the issues, grower feedback through this project has demonstrated that under current conditions, there is a lack of vigorous competition or clear market signals across the poultry meat supply chain which reduces confidence for market participants that the market is operating fairly.

Processors have sought to narrowly define market price transparency to only refer to the specific price paid to growers for their services. However, this definition ignores the broader impact of the poultry meat supply chain on issues that create fair information between growers and processors, affect decision making and influence the effective functioning of the market. While price is a key determinant of how information is communicated within a market, there are also broader factors that shape market transparency and influence decision making. These include:

- lack of sufficient disclosure of business information or material facts before entering into a long-term contractual arrangement
- difficulties in negotiating fair trading terms
- lack of clarity and transparency in trading terms
- lack of contractual certainty, such as exposure to retrospective or unilateral contract variations
- reluctance to make complaints or enforce legal rights due to fear of retribution or loss of contract

These factors are especially relevant to the poultry meat supply chain. Feedback received through this report highlights that difficulties in negotiating fair trading terms, a lack of clarity and certainty as to how processors will abide by contract terms, and an inability to enforce legal rights under the contract or broader legislation impact decision making and operations within the poultry meat supply chain.

Based on information collected through this project in both desktop research and stakeholder engagement, it is clear that harmful practices and behaviours in the poultry meat supply chain stem from the significant market concentration of processors and monopsony environments in which they operate. This market concentration and monopsony environments are exploited reduce market transparency and reduce competition. While there has been substantial growth in Australia's poultry meat industry, this has occurred despite issues of a lack of competition and low market transparency—not as some stakeholders believe, that these issues do not exist.

It is important to address these issues and prevent the ongoing use of harmful practices. However, this must be done in a way that delivers positive outcomes for the supply chain, balances costs and benefits and provides certainty and clarity for stakeholders. As such, it is important to consider the full suite of policy options available to the Australian Government. This section examines potential policy solutions that can address the lack of market transparency and market failures present in the poultry meat supply chain.

As discussed, the current suite of competition law, regulation and other provisions do not provide effective protection for poultry growers.

Regulatory history

The evolution of the poultry meat industry's structure is relevant to understanding why existing regulations, legislation and bargaining tools are not effective at addressing competition and price transparency issues in Australia's poultry meat supply chain.

Before 2000, state-based regulation recognised the bargaining power imbalance between growers and processors and the potential industry instability which could result.[77] During this time, states regulated key aspects of poultry-processor dealings, including periodic fee adjustments, contract terms and conditions, and disputes.

For example, the Poultry Meat Industry Act 1986 (NSW) (as at 1995) established the Poultry Meat Industry Committee. The committee was comprised of processor and grower representatives and independent parties and was charged with approving the form of agreements between processors and growers, the price payable to growers (under agreements and without agreements) and receive dispute claims. Under the Poultry Meat Industry Act 1969 (SA) (repealed), South Australia similarly safeguarded growers from the imbalance in grower-processor dealings.

However, following the implementation of the National Competition Policy in 2000, state regulations were largely abandoned and governments encouraged growers to obtain ACCC collective bargaining authorisations which were thought to be a satisfactory alternative to address the imbalance of bargaining power.[78] These reforms required poultry growers to rely on broader protections under the Australian Consumer Law to address any misuse of market power or unfair business practices.

Existing Australian Consumer Law (ACL) Protections

As the competition regulator, there is a role for the ACCC to play an active role in enforcing the ACL in the poultry meat industry. This is examined below in the context of the potential to use the current ACL as the only method to manage issues identified within the poultry meat supply chain.

Collective bargaining authorisations

Collective bargaining authorisation allows for groups of growers to come together to negotiate as a group. As previously discussed, this mechanism has been attempted by poultry meat growers and has failed, with reasons including but not limited to commercial retribution, group splitting by processors, and continued lack of transparency causing ongoing grower vulnerability. The PAG Inquiry clearly identified this failure, and while it may assist in future arrangements, it is not appropriate as the only form of countervailing power.

From 2005 onwards, the ACCC authorised collective bargaining agreements between groups of growers with their processors in New South Wales, Queensland, Victoria, South Australia, Tasmania and Western Australia.[79] It was initially reported as effective in Victoria and some

[77] VFF, ACCC Perishable Agricultural Goods Inquiry Submission, 2020, p. 2-5.
[78] Ibid.
[79] Ibid.

other parts of Australia, in that the majority of both processors and growers accepted and engaged with the negotiation process in good faith under these conditions.[80]

However, over time growers have reported that collective bargaining has been rendered ineffective by systemic efforts of processors to thwart the ability of collective bargaining to achieve fair outcomes.[81] This failure of effective collective bargaining can be attributed to:

- Monopsony environments: The extent of the monopsony environment means growers lose leverage and the ability to effectively negotiate, even collectively, when there is no choice but to deal with a single buyer. The power disparity is too significant for a collective bargaining mechanism to work effectively.

- Fear of commercial retribution for group representatives: growers report that representatives would be or have been targeted when acting as a group representative or delegate. There is genuine fear amongst growers that if they speak out or act as a group representative they will be subjected to commercial retribution, compromising their business in the future. This often manifests as growers not being offered contract renewals. This fear also extends to the growers' use of legal avenues available to other businesses, such as challenging the use of unfair contract terms, unfair business practices or a misuse of market power. This is particularly the case given that there is no other processor for whom the grower can grow meat birds – growers would have to continue to contract to the same processor.

- Growers have also been systematically discouraged from having legal representation present at negotiations, regardless of whether processors have their legal representatives present (or in the next office).

- Staggering end dates: Collective negotiations are undermined by staggering the end dates of contracts for individuals within the mutual group. These varied end dates effectively split up the group so those individuals or small groups whose contract is up for renewal are treated differently from the rest of the growers for that period of time. It also suggests that any group agreement on prices by definition disadvantages the growers with the latest contract expiry dates, as they are coping with price rises in the interim that may have been at least partially incorporated into new contracts, but with no ability to adjust to suit.

- Individuals or smaller groups within a larger collective have been approached and offered different deals. These individuals may be less equipped to negotiate contracts, may have higher debt loads or may be offered incentives that are not provided to the rest of the group. Fragmentation can also be encouraged by grouping growers together based on area or production system when contracts offered are largely standard form across all groups. This includes grouping tunnel sheds (highly technology based) separate from standard sheds (more energy efficient and cheaper to build and operate but have lower densities). Individuals or smaller groups can then be leveraged against other collective groups.

- Transparency and inconsistency: Growers have no transparency over what deals are being offered to other growers outside of their collective group. For some supply chains, payment systems vary so widely that there is an inability to make a direct comparison between the offerings. The inability to compare and contrast the deal being offered or to know what other groups/individuals have agreed to puts growers at a distinct disadvantage.[82]

[80] VFF, ACCC Perishable Agricultural Goods Inquiry Submission, 2020.
[81] NSW Farmers, ACCC Perishable Agriculture Goods Inquiry Submission, September 2020, p 22-24.
[82] Ibid.

Some grower representative bodies go as far as to allege that major processors have either ignored or refused their obligations to collectively bargain with growers when it has suited them to do so.[83]

During stakeholder engagement, growers identified collective bargaining as a positive tool and an opportunity to redress the power imbalance in the supply chain. The authorizing of processor-based grower groups to collectively bargain and to seek out terms in contracts that align all growers was seen as a positive opportunity to redress the power imbalance that has existed since the abolition of the Poultry Meat Industry Regulations and the subsequent banning of collective bargaining without authorisation in the Australian Competition and Consumer Act 2010 (Cth). However, for the reasons outlined here, collective bargaining cannot be relied on as the only tool to effectively manage the disparity of market power between growers and processors in Australia's poultry meat supply chain. Collective bargaining should be accompanied by other protections and frameworks to overcome issues in the supply chain.

Unfair contract terms

The ACL protects consumers and small businesses from unfair terms in standard form contracts (Unfair Contract Terms (UCTs)). Contract terms are unfair if they:

- give one party a significant advantage over the other
- are not necessary to protect the legitimate interests of the party with the advantage, and
- would cause financial or other harm to the other party if enforced.

Terms that may be unfair include those that:

- enable one party to avoid or limit their obligations under the contract
- enable one party to terminate the contract
- penalise one party for breaching the contract
- enable one party to vary the terms of the contract

As an action of the PAG Inquiry, the ACCC investigated the use of unfair contract terms in Australia's poultry meat industry. In May 2022, the ACCC announced that their investigation identified a number of potentially unfair contract terms, including terms that allowed processors to vary growers' supply arrangements or impose additional costs on growers. Some of the terms also required growers to make significant capital investments or contained imbalanced termination clauses.[84]

In response to the ACCC's findings, several processors agreed to amend certain contract terms to address the ACCC's concerns. Processors agreed to changes that would 'provide some additional certainty and transparency for growers, including by clarifying the circumstances in which a processor may require growers to upgrade their farm facilities and when processors can make changes to their grower manuals.[85] Further, additional changes were agreed to provide clarity about the circumstances in which processors can impose additional costs on growers and to balance notice periods for termination clauses.

It is important to note that while processors agreed to change particular contract terms, the ACCC has made clear to the NFF that it does not endorse or approve contracts and has not done so for any meat poultry farming contract.[86]

Recent reforms to unfair contract term provisions in the ACL provide greater tools for the ACCC to act against the use of UCTs. Specifically, companies that include UCTs in their

[83] VFF, ACCC Perishable Agricultural Goods Inquiry Submission, 2020.
[84] ACCC, Chicken meat processors address potential unfair contract terms, 25 May 2022 < https://www.accc.gov.au/media-release/chicken-meat-processors-address-potential-unfair-contract-terms>.
[85] Ibid.
[86] ACCC personal communications, 2023.

standard form contracts with small businesses are subject to penalties from late 2023.[87] Previously, courts could declare specific terms of a contract unfair and therefore void. However, the court could not impose any penalties on businesses that included UCTs in standard form contracts, nor could an entire contract be voided. The new protections apply to contracts with small businesses that employ fewer than 100 people or have an annual turnover of less than $10 million irrespective of the value of the contract. While this addresses a key recommendation of the PAG inquiry—to introduce penalties for unfair contract terms—several fundamental factors limit the effectiveness and accessibility of unfair contract term protections for growers.

Under current legislation, courts and the legal system are the arbiter of UCTs and any associated punishment for their use. As such, specific contracts that contain UCTs must be challenged in court. This presents a significant barrier to challenging UCTs in poultry meat supply chains and the economy more broadly.

Growers are commonly cash poor and the cost of legal services is significant. As such, growers may decide not to challenge UCTs through the judicial system due to cost and time barriers. Growers may decide that the benefit of a contract without UCTs does not outweigh the cost of the associated legal fees and time away from their business operation.

Further, due to the regional monopsony environments they operate in, growers fear commercial retribution as a consequence of pursuing any legal remedy. Growers are concerned that their processor will not offer a future contract if they pursue legal action, or they may be terminated mid-contract for "inefficiency". With no alternate processor in their region, this would have grave consequences for the grower's business. While representative groups may challenge UCTs on behalf of a group of growers, this challenge would require the representative group to divulge information that would identify individual growers. This again exposes growers to potential commercial retribution.

Because of these factors, growers do not have the appetite to use UCT protections for redress against the misuse of market power. Therefore, unfair contract term protections do not provide an adequate solution to eliminating the inclusion of unfair contract terms or preventing unfair trading practices in the industry long-term.

Unconscionable conduct provisions and unfair trading practices

Unconscionable conduct provisions within the competition regulatory framework an avenue for growers to challenge or remedy the conduct of processors who misuse their market power. However, unconscionable conduct is notoriously difficult to prove, and there have been few successful prosecutions to date. Accessibility barriers noted in the context of UCT protections are relevant here as well, including cost barriers to legal action and a fear of commercial retribution. When weighing the likelihood of success with the significant time and cost, in addition to pressures such as commercial retribution, growers are unlikely to pursue processors under unconscionable conduct provisions.

The Australian Government is exploring options for an Unfair Trading Practices framework that would lower the barrier to uptake of addressing harmful commercial practices not currently captured by existing protections in the ACL such as misleading and deceptive conduct and unconscionable conduct provisions. This reform may equip regulators with more tools to address unfair trading practices where they do not reach the high bar of unconscionable conduct. However, they will not address ongoing concerns of commercial retribution and monopsony environments that are preventing the effective use of ACL protections for the poultry meat supply chain.

[87]ACCC, Contracts, 2023 < https://www.accc.gov.au/business/selling-products-and-services/contracts#:~:text=Changes%20to%20the%20law%20on%20unfair%20contract%20terms%20came%20into,of%20the%20law%20will%20apply.>

Hence, such changes might provide better countervailing power for meat poultry growers. However, they are unlikely to provide the most effective or appropraite solution to issues raised in this report for the following reasons:

- any action under the implemented changes still relies on a grower being prepared to challenge a processor over the use of unfair contract terms. As previously described, noting that the significant majority of growers have only one processor to whom they can contract and a fear of commercial retribution, this is unlikely to occur.
- there is no transparency of pricing in the industry that might allow a grower to exercise legitimate countervailing power: this does not change with the changes to the ACL
- action would require a significant investment of time and money by a grower.

Misuse of market power

Section 46 of the Competition and Consumer Act 2010 (Cth) (CCA) relates to the misuse of market power. This section prohibits a firm with substantial market power from maintain or advance its position by restricting or undermining its rivals' ability to compete, rather than through innovation. Section 46 does not prohibit a firm from obtaining a substantial degree of market power through, for example, being more efficient, to gain market share from those firms which are less efficient. This is part of the competitive process and should not be deterred.

Nevertheless, market power can constrain competition and its misuse can lead to market failure and economic harm. Substantial market power may enable a firm to raise barriers to entry, profitably reduce the quality of goods or services or slow innovation. It may also allow a firm to profitably sustain prices above competitive levels, negatively impacting competition within the economy.

There are a range of factors that can influence the level of restriction on competition, including the:

- degree of market concentration
- height of barriers to entry
- extent to which the products of the industry are characterised by product differentiation
- extent of vertical integration
- nature of any formal, stable, and fundamental arrangements between firms which restrict their ability to function as independent entities.

This is well illustrated in the poultry meat supply chain. As outlined in Section 1 of this report, there are significant cost barriers to the development of new poultry processing facilities in Australia. In conjunction with skills shortages, planning issues and poultry farm developments, there are considerable barriers to entry in the processing elements of the poultry meat supply chain. Specifically, there are high barriers to entry for new processors by virtue of the:

- exclusive supply contracts with meat poultry genetics companies
- cost and planning issues around the building of hatcheries, feedmills and other infrastructure
- shortage of qualified meat poultry expert veterinarians,
- cost and planning issues around the building of processing plants
- difficulty of attracting and retaining skills abattoir staff
- low margins associated with economies of scale produced by the current oligopolistic processor group

In a submission to Treasury on the options to strengthen the misuse of market power in 2015, the ACCC identified that Section 46 of the CCA was not fit for purpose for two reasons:[88]

- It failed to capture a range of anti-competitive conduct by firms with substantial market power.
- The purpose test was focussed on the impact of the conduct on individual competitors, not on the impact of the competitive process generally.

This led to the revision of Section 46 of the CCA Act in 2018, which now prohibits a firm with a substantial degree of market power from engaging in conduct that has the purpose, effect, or likely effect of substantially lessening competition in a market.

Despite this misuse of market power provisions are of little practical relevance for a grower challenging supply chain abuses. To prove misuse of market power by a processor, a grower would need to demonstrate that the offending behaviour would lessen competition in the processing market. This could be conceived as an incredibly hard ask for a grower to prove. Farmer representative bodies believe that such issues limit the utility of s46 broadly, as it in essence only deals with blocking a competitor rather than the misuse of market power across a supply chain.

Legislative reform could expand the scope of the misuse of market power provision to include impacts on other businesses along the supply chain. This could capture the impact of a misuse of market power by a processor against a grower. However, like UCTs and unfair trading practices, this provision must be addressed through courts. As such, an expanded misuse of market power provision would experience the same constraints to effective uptake as existing legislative protections.

In the context of issues raised, the ACCC's recent activities and changes to the ACL area are a positive change to support more effective management of a lack of competition or market transparency. However, taken alone, these legislative and regulatory tools will not effectively overcome the challenges this report has identified within the poultry meat supply chain.

To date, the current suite of competition law, regulation and other provisions have provided little substantive protection to poultry growers from a lack of market transparency and supply chain abuses, including those highlighted in case studies in this report. Being unable to negotiate with processors, who have significant market and bargaining power, has meant that the margins of growers have been squeezed, including below the cost of production. Moreover, there is a trend for processors to ignore some fixed costs, such as depreciation, as a farming cost and then terminate older farms at contract end in favour or new farms.

Growers face significant barriers to accessing effective protections and pursing remedies. These barriers include, but are not limited to, the cost of legal advice or accessing the courts (particularly noting the circumstances place strain on their businesses profitability), fear of commercial retribution (contracts not being renewed or instant termination) and the reality of being outsourced by the processor.

Overseas options and interventions

United States "tournament" system, review and proposed interventions

In the USA, more than 90 per cent of all meat birds are raised by contract growers in a supply chain integration model almost identical to Australia. Half of all growers are purported to have a choice of only one or two processors with which they can work.[89] The

[88] ACCC, Options to strengthen the misuse of market power law, February 2016.

[89] Chicken Check In, Why do chicken farmers partner with chicken companies?, accessed December 2023, https://www.chickencheck.in/faq/chicken-contract-

top four poultry processing firms control 54 per cent of the market.[90] This is substantially less concentrated than the Australian poultry processing market. Owing to their greater negotiating power than that of the growers with whom they contract, processors (known as live poultry dealers in the USA, of which there are more than 100 registered with the US Food and Drug Administration) set the terms of the contracts and important aspects of their execution.[91]

Most growers producing poultry under production contracts are paid under a "tournament" pay system, the processor pays growers a base rate and then a "bonus" apparently based on performance (including bird health).[92] Like the Australian pool system, there are a number of issues with the tournament system. This includes deliberately withholding data from growers – decoupling price signals and weakening bargaining power.[93]

The USDA has received ongoing complaints from poultry growers about the use of tournament systems and continues to receive suggestions that the USDA should ban, restrict or condition the use of tournament systems or particular aspects of those systems.[94]

The U.S. Government has made several attempts to address grower concerns arising from the use of poultry growing arrangements and elements of the tournament system.[95] Firstly, the government considered mandating that, when paying growers under poultry grower ranking systems, live poultry dealers must pay growers the same base pay for growing the same type and kind of poultry. The regulation further proposed to require that tournament system growers be settled in groups with other growers with similar house types.[96] The proposed regulation was amended in 2016 to give the USDA criteria to consider when determining whether a live poultry dealer's use of a system for ranking poultry growers for settlement purposes is unfair, unjustly discriminatory, or deceptive or gives an undue or unreasonable preference, advantage, prejudice, or disadvantage.[97] The proposed reforms were withdrawn in 2021.[98]

In response to the U.S. Government's Executive Order on Competition in July 2021, the U.S. Department of Agriculture (USDA) launched '*Agricultural Competition: A Plan in Support of Fair and Competitive Markets*' ('The Plan').[99]

The Plan seeks "to ensure farmers have greater opportunities to access markets and receive a fair return for their products" through a plan "to promote competition in the agricultural industries and to support value-added agriculture and alternative food distribution systems…"[100]

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growers/#:~:text=More%20than%2090%25%20of%20all,farmers%2C%20compared%20to%20independent%20growers>.

[90] The White House, FACT SHEET: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain, 3 January 2022.

[91] U.S. Department of Agriculture, Live Poultry Dealer, accessed December 2023, https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/regulated-entities/live-poultry-dealer.

[92] Ibid; Chicken Check In, What is the "Tournament System?", accessed December 2023, <https://www.chickencheck.in/faq/tournament-system/#:~:text=Chicken%20farmers%20are%20paid%20under,as%20the%20%E2%80%9Ctournament%20system.%E2%80%9D>.

[93] Douglas and Leonard, Is the US Chicken industry cheating its farmers, The Guardian Australia, 3 August 2019, <https://www.theguardian.com/environment/2019/aug/03/is-the-us-chicken-industry-cheating-its-farmers>.

[94] See e.g. Agricultural Marketing Service, Poultry Grower Ranking Systems; Withdrawal of Proposed Rule, U.S. Department of Agriculture 86 FR 60779, 4 November 2021, <https://www.federalregister.gov/documents/2021/11/04/2021-23945/poultry-grower-ranking-systems-withdrawal-of-proposed-rule>.

[95] Ibid.

[96] Ibid.

[97] Ibid.

[98] Ibid.

[99] The White House, Executive Order on Promoting Competition in the American Economy, 9 July 2021; Agricultural Market Service, Agricultural Competition: A Plan in Support of Fair and Competitive Markets, U.S. Department of Agriculture, May 2022.

[100] Agricultural Market Service, Agricultural Competition: A Plan in Support of Fair and Competitive Markets, U.S. Department of Agriculture, May 2022, p 6.

Under the Plan, the USDA is seeking to modernise its fair and competitive markets toolkit by implementing new rules under the Packers & Stockyards Act 1921 (USA) to address poultry contracting and tournaments.[101] The Packers & Stockyards Act 1921 (USA) includes rights and protections for poultry growers who raise live poultry for slaughter by a sperate entity under a contract, including:

- Right to prompt and accurate payment
- Protection against unfair practices
- Protection from inaccurate weighting, including that:
    - The company must give you a copy of all feed and live poultry scale tickets for your farm (rule 201.49(a))
    - The company must promptly weigh live poultry from your farm (rule 201.82(b)).
    - You have the right to observe the weighing of live poultry that you raised (rule 201.108-1(e)(3)).
- Additional capital investment
    - The company must disclose in the contract that it may require the grower to make additional large capital investments (S. 208(b)). All such requirements must be fair and reasonable (rule 201.216).
- Unfair suspension of delivery of birds
- Period or remedy breach of contract
- Right to notice of termination.[102]

As at November 2023, reforms to the Packers and Stockyards Act 1921 (USA) will include that (effective from 12 February 2024):

- A Live Poultry Dealer Disclosure Document (Disclosure Document), to be provided to prospective or current broiler growers that contains critical information about the broiler growing arrangement when seeking to establish, renew, revise, or replace a broiler growing arrangement with the grower, including when a broiler growing arrangement would or might reasonably require a broiler grower to make an original or additional capital investment to comply with the live poultry dealer's housing specifications;
- The Disclosure Document provides a more fulsome set of financial disclosures, including average annual gross payments to growers over the past 5 years broken out by quintiles to reflect the full range of outcomes, and a summary of information pertaining to grower variable costs inherent to broiler production.
- Mandated disclosures in the contract that also set out the minimum number of placements to be delivered to the broiler grower's farm for each year of the broiler growing arrangement contract, as well as the minimum stocking density of each placement.
- When a poultry grower ranking system is used, disclosures of critical information about the flock (e.g., stocking density, breed names and ratios, breeder facility identifiers, and breeder flock age) placed with the grower must be disclosed within 24 hours of delivery.
- When a poultry grower ranking system is used, dealers must provide settlement disclosures regarding critical information about each grower's ranking within the system, in particular the nature of the inputs received (stocking density, breed names and ratios, breeder facility identifiers, and breeder flock age) and housing

[101] U.S. Department of Agriculture, Live Poultry Dealer, accessed December 2023, <https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/regulated-entities/live-poultry-dealer>; U.S. Department of Agriculture, Growers' Rights in Poultry Growing Arrangements, accessed December 2023, <https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/regulated-entities/growers-rights-poultry>.

[102] U.S. Department of Agriculture, Growers' Rights in Poultry Growing Arrangements, accessed December 2023, <https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/regulated-entities/growers-rights-poultry>.

specifications for each growout period, without the identities of the growers to each other.[103]

Additionally, the U.S. Department of Justice (DOJ) and USDA announced a joint initiative to better coordinate their efforts, including launching a portal for reporting concerns about potential violations of the competition laws. The DOJ and USDA further announced that they will enhance their collaboration on referrals, information sharing, and identifying areas of the law in need of modernisation.[104]

The U.S. regulatory system provides positive regulatory based options that could improve issues within Australia's poultry meat supply chain. While the tournament system has some similarities to the Australian pool system, it also shares similar issues of a lack of bargaining power, price decoupling and failure to operate in good faith. Proposed reforms to the tournament system could be applied to the Australian supply chain to improve the operation and transparency of pool systems.

Additionally, the move to greater regulatory intervention within the U.S. poultry meat supply chain demonstrates that the U.S. Government has recognised that direct government intervention is needed to address economic harms and market failures in the poultry meat supply chain. Requirements under the Packers and Stockyards Act 1921 (USA) will support fairer relationships between growers and processors in the operation of contracts, delivery and collection of birds and required capital investments.

European Union policy and regulatory approach

The European Union (EU) has a different supply chain structure for its poultry meat industry than the Australian and US industries. The EU is charactersied by a higher number of professional growers (approximately 20,000)[105] compared to Australia (approximately 500-700). Unlike Australia, the EU as a hybrid production system, with different levels of integration in different countries. This hybrid system includes:[106]

- integrated processors with contracted growers (such as in Austria, France, Germany, Italy, Spain)[107]
- non-integrated production where the different links in the supply chain are independent companies trading on the market, with breeders and growers buying and feeding birds at their own risk (Belgium, Finland, the Netherlands, Poland and Sweden)[108]

Because of this hybrid system, there are a larger number of processing companies, for example there are 1,970 slaughterhouses/processing plants in the 27 EU nations.[109]

European poultry growers are covered by the common market organisation a set of rules that regulate and organise agricultural markets in the EU.[110] Most importantly, these rules covers intervention on agricultural markets, marketing of agricultural products (e.g. marketing standards, geographical indications, labelling) and the functioning of producer and interbranch organisations.[111] This includes market information that supports grower decision making, such as the number of birds in the market, and selling prices of chickens

[103]Agricultural Market Service, Agricultural Competition: A Plan in Support of Fair and Competitive Markets, U.S. Department of Agriculture, May 2022, p 18; Agricultural Market Service, Transparency in Poultry Grower Contracting and Tournaments, 28 December 2023.
[104] U.S. Department of Agriculture, USDA, DOJ Launch Online Tool Allowing Farmers, Ranchers to Report Anticompetitive Practices, 3 February 2022, <https://www.usda.gov/media/press-releases/2022/02/03/usda-doj-launch-online-tool-allowing-farmers-ranchers-report>.
[105] Van Horne and Bondt, Competitiveness of the EU poultry meat sector, 2013.
[106] European Commission Enterprise and Industry, Study on the Competitiveness of the European Meat Processing Industry, 2010.
[107] Ibid.
[108] Ibid.
[109] Van Horne and Bondt, Competitiveness of the EU poultry meat sector, 2013
[110] European Commission, Commission Implementing Regulation (EU) 2017/1185
[111] Ibid.

at slaughter plants.[112] This provides clear market information along the poultry meat supply chain to support effective decision making for all supply chain actors.

Growers can also receive investment support from the CAP's second pillar, through various rural development measures co-funded by the Member States. The European Agricultural Fund for Rural Development (EAFRD) provides compulsory co-financing by national/regional budgets. Many measures can benefit poultry growers or entrepreneurs directly or indirectly, including:

- knowledge transfer and information measures
- advisory services
- farm and business development
- setting up of producer groups and organisations
- cooperation
- risk management

This support further enhances market transparency in the poultry meat supply chain to support growers and other actors to be better informed in their business activities.

Despite these differences in the supply chain, higher number of supply chain actors, and lower vertical integration among processors, there are a number of similarities between Australian and the European Union. An analysis of competitiveness of the EU Meat Industry[113] in 2011, conducted by the European Commission on Enterprise and Productivity, found that:

- growers are fragmented and have little influence on downstream industry
- sharp conflicts have arisen between different parts of the value chain.
- the processing sector is highly concentrated with a small number of large processors dominating the market.
- increasing processor cartels in some EU jurisdictions increased the bargaining power of processors against retailers, with the intent of retail price maintenance "regardless of price changes along other tiers of the value chain"
- joint selling by processors strengthened their position in the market against a small number of large retailers dominating the market.
- exclusive supply agreements tying a supplier to a buy were causing concern as a potential trigger to reduced competition,
- asymmetric price transmission was common and unrelated to supply and demand.

The EU primary recommendation was the immediate introduction of a voluntary Code of Conduct with regular monitoring, noting that:

"....the European Commission should come with a fairly strong message, saying that perceived inequities between levels of the value chain and price asymmetries are the problem that the Commission wants addressed. If industry cannot solve the problem, then the European Commission will be forced into a more proactive, and regulatory approach" [114]

Even in the face of significantly better market information than in Australia, in the face of a significantly more open supply chain than Australia and significantly less market concentration in both the processing and retail sectors, the primary recommendation was for a Code of Conduct. This demonstrates that increasing awareness and understanding of elements of market transparency while positive may need to be supported by regulatory intervention to support supply chain actors.

Countervailing power legislation

State or federal legislation can be an effective mechanism to provide countervailing power to meat poultry growers in their relationships with processors.

[112] Ibid.
[113] European Commission Enterprise and Industry, Study on the Competitiveness of the European Meat Processing Industry, 2010.
[114] Ibid.

Prior to their removal following the implementation of the National Competition Policy, state based legislation was used to regulate the relationship between growers and processors. This legislation governed grower-process dealings and had provisions for periodic fee adjustments, dispute resolution mechanisms and contract terms and conditions.[115] The legislation acted as a form of industry wide quasi-collective bargaining as a board that included grower and processor representatives negotiated decisions, including for annual fee increases.[116]

This legislative model can be used to provide a framework and process to provide reasonable economic returns to growers through direct price adjustments. These tools can be effective in providing infrastructure and oversight to industry arrangements and is generally low cost to operate. In addition, it has the advantage of automatic generation of key industry information and statistics to allow transparency, and a robust negotiation system allowing both growers and processors to put their arguments without a fear of commercial retribution.

However, the use of these instruments also have a number of disadvantages. These disadvantages include:

- Changes to the operation of the legislation agreed between growers and processors are likely to require a change to the legislation in many cases. This is time consuming, resource intensive and relatively costly. This can slow the implementation of effective working arrangements between grower and processors.

- Legislation could only operate to the extent of its specifications, namely transparency of pricing. Other issues identified in this report, such as weighbridge dockets, transparency of pools, conditions in contracts and good faith negotiation could not be adequately captured. This would still leave a number of issues unresolved, continuing economic harm in the supply chain.

- Such legislation operated at state level, resulting in considerable differences between approach and outcome by state. This would increase the complexity and potential compliance cost for both growers and processors with a national footprint.

While a legislative approach has demonstrated some benefit to the supply chain, legislation adds cost and complexity to regulation of issues within the supply chain. This cost and complexity is especially prevalent for national operators who would have to comply with different schemes in different states. This would increase compliance and administration costs for both growers and processors without delivering effective positive outcomes for supply chain stakeholders. Additionally, legislation can be too slow to effectively update to reflect changing production practices.

Codes of Conduct

Codes of Conduct are a mechanism for managing market failure, issues of market transparency, competition and power imbalances in industries across the economy.[117] Industry Codes provide a set of rules or minimum standards for an industry. Codes of conduct can provide a flexible regulatory framework for improving the transparency of transactions and identifying and sanctioning unacceptable forms of behaviour.[118]

Codes of Conduct cover the relationship between all or some industry participants and their customers.[119] Industry specific Codes of Conduct examine a broader range of elements that influence market transparency than those used in other methods of market intervention. This includes availability of information in the market, price and non-price factors,

[115] VFF, ACCC Perishable Agricultural Goods Inquiry Submission, 2020.
[116] Ibid.
[117] Australian Government, Industry Codes of Conduct Policy Framework, 2017.
[118] Productivity Commission, Regulation of Australian Agriculture, 2016.
[119] ACCC, Industry Codes, accessed December 2023, <https://www.accc.gov.au/business/industry-codes>.

behaviours and external factors that might affect market dynamics. Codes of Conduct can support all supply chain actors and guard against misconduct and opportunistic behaviour, while fostering long term changes to business culture.[120] Codes can play a valuable role in bringing industry participants together, often small businesses and their larger business counterparts, to find ways to address problems in commercial dealings between them.[121]

Codes of Conduct fall into two groups, voluntary and mandatory codes.

Mandatory codes are prescribed as regulations under ACL. Mandatory codes provide a set of rules or minimum standards for an industry where there is an identifiable problem to address. These problems often stems from an imbalance of bargaining power. The Australian Government outlines examples of problems and associated behaviours, including:[122]

- lack of sufficient disclosure of business information or material facts before entering into a long-term contractual arrangement
- difficulties in negotiating fair trading terms
- lack of clarity and transparency in trading terms
- lack of contractual certainty, such as exposure to retrospective or unilateral contract variations
- reluctance to make complaints or enforce legal rights due to fear of retribution or loss of contract

Mandatory codes can be used as an alternative to primary legislation in instances where a market failure has been identified. Codes are a unique regulatory tool as they offer industry participants with an opportunity to become involved in the process — including initiating the Code, shaping the rules, and educating industry participants once the code is in place.[123]

Under a mandatory code, all relevant supply chain actors must act in accordance with the requirements of the Code and there are penalties for non-compliance.[124] Compliance and associated penalties may be enforced by the ACCC or through private legal action. The ACCC is responsible for regulating the codes, monitoring compliance and taking enforcement action when necessary. Under the Competition and Consumer Act 2010, enforcement options and penalties for non-compliance with a Mandatory Code can include:[125]

- injunctions to either prevent or require particular conduct (section 80)
- damages to compensate for loss or damage resulting from a contravention of a code (section 82)
- non-punitive orders such as community service orders (section 86C—only on application of the ACCC)
- other compensatory orders (section 87)

Like mandatory codes, voluntary codes set out specific standards of conduct for an industry including how to deal with its members and customers.[126] However, voluntary codes only apply to supply chain actors that agree to operate in line with the Code's requirements. That is, signatories to a voluntary code opt-in and can subsequently opt-out or withdraw at any stage.[127] Because of their voluntary nature, there are no penalties for non-compliance with the Code.

The Australian Government only prescribes Codes of Conduct in very limited circumstances where there is a compelling case for intervention, supported by robust evidence. To date, this has occurred in four agriculture-related industries:

[120] Australian Government, Codes of Conduct, 1 December 2022, accessed December 2023 <https://business.gov.au/legal/fair-trading/codes-of-conduct>.
[121] Australian Government, Industry Codes of Conduct Policy Framework, 2017.
[122] ibid.
[123] Australian Government, Industry Codes of Conduct Policy Framework, 2017.
[124] Australian Government, Codes of Conduct, 1 December 2022, accessed December 2023 <https://business.gov.au/legal/fair-trading/codes-of-conduct>.
[125] Australian Government, Industry Codes of Conduct Policy Framework, 2017.
[126] https://business.gov.au/legal/fair-trading/codes-of-conduct
[127] Australian Government, 'Industry Codes of Conduct Policy Framework', 2017.

- Wheat Port Code of Conduct (2014)
- Horticulture Code of Conduct (2017)[128]
- Sugar Code of Conduct (2017) [129]
- Dairy Industry Code of Conduct (2020) [130]

The Australian Government has introduced five mandatory codes for non-agricultural industries:

- Franchising Code of Conduct (2014)
- Oil Code of Conduct (2017)
- Electricity Retail Code (2019)
- Newsmedia Bargaining Code of Conduct (2021)
- Unit Pricing Code (2021)

The Australian Government has also introduced one prescribed voluntary code for an agriculture-related industry:

- Food and Grocery Code of Conduct (2015)

In each of these cases, the government has recognised that markets do not operate freely and that significant imbalances of countervailing power can result in uncompetitive behaviour and economic inefficiency. These codes, most notably the mandatory codes, have successfully organised highly concentrated supply chains for better transparency and operability while reducing economic waste.

Analysis of Policy Options

Examining the evidence of this report, the NFF supports the ACCC's comments in the PAG Inquiry that 'there are practices occurring in PAG industries [including poultry meat] that cause significant economic harm'[131] and 'that a regulatory response is required, given the harmfulness of these practices.'[132] Given the range of policy options available and the varied range of issues, this report has identified in the poultry meat supply chain, it is important to analyse and compare the different reform options available to the Australian Government.

The Australian Government has outlined that market intervention should only occur to address market failures.[133] Market failure occurs when there are problems with the operation of a market that prevents it from producing optimal outcomes.[134] In these situations, resources cannot flow to their best use, to the detriment of industry participants and consumers. Examples of market failures explicitly identified by the Australian Government are asymmetric information and imperfect competition—both components of market transparency.[135] It is the NFF's view that this report has demonstrated these to exist in the Australian poultry meat supply chain.

In the PAG Inquiry, the ACCC outlines a clear framework for considering the best means of addressing market concentration, market transparency, economic harms and related challenges. This framework focuses on the following questions:[136]

1. Can the harms be addressed by existing laws through ACCC action?
2. If ACCC action is not possible, can existing competition and fair-trading laws be improved to address these harms?
3. If existing laws cannot be improved, are more substantial reforms required and if so, should they be focused on a particular industry or have economy wide effect?
4. Are there problems that fall outside the scope of competition and fair-trading laws?

[128] Competition and Consumer (Industry Codes—Horticulture) Regulations 2017 (Cth).
[129] Competition and Consumer (Industry Code—Sugar) Regulations 2017 (Cth).
[130] Competition and Consumer (Industry Codes—Dairy) Regulations 2019 (Cth).
[131] ACCC, Perishable agricultural goods inquiry, November 2020, p 116.
[132] Ibid, p 116
[133] Australian Government, Industry Codes of Conduct Policy Framework, 2017.
[134] Ibid.
[135] Ibid.
[136] ACCC, Perishable Agricultural Goods Inquiry, November 2020.

Additionally, the Australian Government outlines decision-making criteria for prescribing industry codes. This examines a key set of questions to determine if it should prescribe an Industry Code and supports clear consideration of the facts and a robust decision-making process. These questions are:[137]

1. Is there an identifiable problem in the industry?
2. Can the problem be address using existing laws or regulations?
3. Has industry self-regulation been attempted?
4. Is an industry code the most suitable mechanism for resolving the problem?
5. Is there likely to be a net public benefit?

Through both this study and the ACCC's PAG Inquiry, a broad range of issues have been identified in the poultry meat supply chain. Comparing the different policy options, it is the NFF's view that existing protections under the ACL are not suitable nor adequate to address these issues. While the ACL could address some issues, the requirement for these issues to be addressed through the court system will stymie their uptake, rendering them ineffective. This is because of the significant upfront costs of legal action and the fear of commercial retribution that growers continue to express.

Additionally, it is the NFF's view that addressing all issues through the legal system adds significant costs to all parties, leading to an inefficient outcome. That is, there are lower cost options to address the issues discussed in this report.

Examining international options and methods used to address similar issues, similar countries are also moving to a more regulatory response. With both the United States and European Union examining regulatory interventions similar to a Code of Conduct, there are limited options that can be utilised in Australia.

While there has previously been some success with a legislative approach, like the state legislative instruments used in the 1990s, legislation is too slow and prescriptive to ensure this instrument remains relevant and can easily adapt to changing market conditions.

Based on this assessment, it is the NFF's view that a Code of Conudct is the most appropriate and effective intervention for the Australian Government to address the issues that have been identified in the Australian poultry meat supply chain. A Code provides a clear framework to address market failures, market transparency and behaviours that influence the operation of a fair market and supply chain.

This report has collected evidence that suggests several issues in the poultry meat supply chain go beyond simple pricing to a broader range of activities that influence the operation of growers' businesses, the operation of their contracts, and investment decisions. Because of this, any government intervention needs to be able to capture the broader array of issues and activities that negatively influence the poultry meat supply chain. From the options examined in this report, a Code of Conduct is the most suitable and appropriate tool.

It is important to consider the costs and benefits of any code. The implementation of any new regulatory intervention will have a cost on all supply chain actors. This includes a Code which will have development, education and compliance costs for growers, processors, and retailers. However, a Code will also have tangible benefits for the supply chain through clear communication, more effective distribution of risk, and greater certainty for investment. A Code will also help to overcome the economic harms that are occurring within the supply chain and the inefficient allocation of resources that result.[138] It is the NFF's view that the costs of a code will be outweighed by the broader, long-term benefits that derive from an improvement in standards of conduct.

[137] Australian Government, Industry Codes of Conduct Policy Framework, 2017.
[138] ACCC, Perishable agricultural goods inquiry, November 2020.

PART 6 – Code of Conduct

Codes of Conduct are a regulatory tool that have been used by the Australian government to address the negative impact of market concentration and imbalances in agriculture and other sectors. These Codes of Conduct seek to provide minimum standards of behaviour between supply chain actors to reduce economic harms and the negative impact of a lack of competition on market transparency. As discussed previously this includes instances where a lack of market transparency leads to:

- lack of sufficient disclosure of business information or material facts before entering into a long-term contractual arrangement
- difficulties in negotiating fair trading terms
- lack of clarity and transparency in trading terms
- lack of contractual certainty, such as exposure to retrospective or unilateral contract variations
- reluctance to make complaints or enforce legal rights due to fear of retribution or loss of contract

Based on information in this report, it is the NFF's view that a Code of Conduct is the most appropriate tool for the Australian Government to address the economic harms and issues of market transparency and misuse of market concentration in the Australian poultry meat supply chain. This information, as previously discussed includes desktop research, the findings of the ACCC PAG Inquiry, stakeholder engagement across the supply chain, analysis of existing legislation and policy options and comparison to international activities.

The NFF has drafted a proposed Code of Conduct for the Australian Poultry Meat Industry. This Code has been prepared considering the information received during this project, the market failures identified and to increase market transparency. This Code is at Appendix 4. This Code has also been informed by analysis of existing Codes. A summary of the provisions in existing Codes used to inform this Code is at Appendix 5.

While a Code of Conduct can address issues identified, it is important that any new regulation is effectively designed to ensure that it is effective and does not place excessive burden on the supply chain. This section outlines the design and considerations of a potential Code of Conduct to meet these intentions.

Provisions of a Code

A Code of Conduct should balance general and specific provisions to ensure it affectively addresses issues within the poultry meat supply chain and is specifically designed to suit the unique conditions of the industry. As such, the NFF has reviewed to identify general and specific codes that should be included in any Poultry Meat Code of Conduct.

General Provisions

1. **Mandatory or Voluntary Classification**
   The Code should stipulate a Mandatory of Voluntary classification. This will provide clarity on the enforceability of the Code. It will also provide clarity on how the Code is monitored and enforced. This would also ensure that all parties, including legal advisors, compliance advisors and industry players, clearly understand the nature and extent of enforcement for the Code.

2. **Review Provisions**
   The Code should provide clear provisions for review and update of the Code. This will ensure that Code is updated and amended to reflect relative effectiveness of the Code and remove elements that influence its uptake and compliance.

3. **Good faith provisions**
   A Code should include 'good faith' provisions in relation to any contractual negotiations that occur under the Code. This would ensure that both parties needs were considered in the contractual negotiations.

4. **Effective dispute resolution mechanisms.**
   The inclusion of dispute resolution mechanisms such as independent mediation and arbitration is integral to the success of the Code. Any engagement between parties in reference to contracts or behaviour needs to be on an independent basis.

5. **Penalties imposed for breaches of the contract.**
   If mandatory, the Code should have clear penalties. This would ensure that there is a clear disincentive to breach the Code.

Specific provisions

In addition to general provisions, the Code should have specific provisions that ensure the Code is tailored to the unique circumstances of the poultry meat supply chain. Each element of the proposed Code should be worded to avoid misunderstanding. These specific provisions should include:

1. Publish standard forms or minimum terms of supply/trade agreements

2. Requirements to have written supply or trade agreements, or not trade without an agreement in place

3. Requirements which must be specified in agreements, including:
   - Cooling-off periods
   - Supply periods (common start and end date)
   - Quality and quantity specifications
   - Price transparency
   - Mechanisms – prescribed minimum price or price determination formula
     - Prohibition of retrospective step downs
     - Prohibition or strict limits on circumstances regarding unilateral prospective step downs or similar elements.
     - Detailing point in supply chain when price will be determined and information relayed to producers
     - Where a pool system is proposed to operate, the rules surrounding the operation of the pool, ability to interrogate the pool and validation methods determining position in pool,
   - Time for payment
   - Fees for services incl. commissions, fees, any extra costs
   - Required reporting or communication to producers/farmers/growers
   - Conditions under which contract can be unilaterally varied and/or terminated, including *force majeur*
   - Loyalty payments where appropriate
   - Conditions under which contract renewals will be negotiated and agreed
   - Conditions under which additional capital expenditure will be entered into by the farmer
   - Extensions

4. Penalties for non-compliance, particularly in regard to:
   - Failure to comply with the Code requirements
   - Retrospective step downs or similar actions
   - Unilateral variations or terminations
   - Withholding loyalty payments or other payments due

5. Complaints and disputes

- Agreements must provide for complaint handling process
- Independent assessors/arbiters of quality disputes, regarding price reductions or rejection of product
- Mediation
    - Advisor and mediator
    - Costs
    - Termination
- Arbitration
    - Advisory and arbitrator
    - Costs
    - Termination
- Confidentiality

6. Record-keeping requirements

7. Requirement to publicly report disputes

In addition these specific provisions, there are provisions in the Franchising Code of Conduct that may support the effective operation of a Code for the poultry meat supply chain. These provisions recognises issues in relation to high levels of capital expenditure both at commencement of contract and at contract renewal.

This should include but may not be limited to:[139]

- a disclosure document provided to buyers prior to purchase identifying key aspects of the processor that may change the decision as to whether to enter into a significant capital purchase, and
- behaviours in relation to significant capital expenditure during the contract and on renewal of contract are adequately considered in negotiations.
- farmer-friendly termination rights
- prohibition of processors from passing on certain legal costs
- higher threshold for restraint of trade provisions

Voluntary versus mandatory prescription

It is important to consider if any Code should be prescribed as voluntary or mandatory. This prescription has significant implications for the views of industry, industry agreement or disagreement and the Codes long-term efficacy at addressing issues identified within the supply chain.

The Government will only prescribe mandatory or voluntary codes in very limited circumstances — when it is absolutely necessary for supporting the efficient operation of markets or the welfare of consumers. This high threshold is reflected in the limited number of codes that have been prescribed over the years.

A clear question that forms part of the Australian Government's consideration of intervention through a Code is if industry has attempted self-regulation to address the issues within the supply chain. This self-regulation could take the form of a voluntary code for the poultry meat supply chain.

Voluntary, industry-led approaches to resolving issues are generally a preferred option for government and industry. This is because industry-led approaches support greater flexibility and speed in addressing new and emerging practices and issues within the supply and between industry stakeholders. Generally, a voluntary approach is most effective when private self-interest coincides with the broader public interest (Sarker 2013) and where the parties generally agree, with only a few rogue operators. Voluntary codes are most successful when the code has broad support within the industry, especially from key

[139] Cade and Ho, Changes to the Franchising Code Improving transparency in Australia's franchising sector, 2021.

stakeholders.[140] In this case, growers and processors. Given the disagreement between growers and processors identified in this report, there is no broad support for a Code in the poultry meat supply chain.

In assessing the potential of a voluntary code or self-regulation, it is also important to consider how market concentration and geographic location affects the operations of processors. As previously discussed, the poultry meat supply chain has a very high level of market concentration with Inghams and Baiada controlling over 70 per cent of the industry.[141] Additionally, these processors predominantly operate in regional monopsony environments where they are the only processor and there are no other options for growers to provide their services.[142] As such, self-regulation within the poultry meat supply chain is highly dependent on the processor's behaviour. According to the finding of this report, processors' behaviour has sought to exploit their market power. This is compounded by the views of processors in this report who have indicated that there are no issues within the supply chain and that the market is working efficiently and effectively. As such, there is no appetite from key stakeholders to implement any form of self-regulation.

There is value in comparing a potential voluntary Code for poultry meat with the operation of the Food and Grocery Code of Conduct. The Food and Grocery Code of Conduct is a voluntary code that seeks to regulate the interactions between supermarkets and their suppliers.[143] The ACCC in the PAG Inquiry highlighted several shortcomings with the Food and grocery Code, including its voluntary prescription. It is the ACCC's view that the code is undermined by the risk that signatories will withdraw and no longer be bound by the Code.[144] This is further undermined by a lack of penalties in the Code which prevents the ACCC from conducting enforcement activities.[145] It also reduces the likelihood of suppliers raising complaints under the Code as they dear commercial retribution without potential consequences for the supermarkets.[146] These views are also shared by the Food and Grocery Code Independent Reviewer who has repeatedly called for penalties for non-compliance with the Code in order to increase its efficacy.[147] These short-comings are well-summarised by the ACCC in its submission to the 2018, Food and Grocery Code of Conduct Review:

"Under a voluntary Code, there is an ongoing risk of withdrawal by signatories and insufficient coverage of new entrants or existing major participants that refuse to sign up. This reduces the Code's effectiveness and utility, including because suppliers cannot rely on it consistently and in full confidence. Making the Code mandatory would remove these risks and provide greater certainty to both suppliers and to new entrants."[148]

The voluntary nature of the Food and Grocery Code also means that it does not apply to all relevant stakeholders in the Industry. Notably, Foodworks, Foodland, Harris Farm, Costco, and Drakes, among others, are not signatories to the Code and therefore not covered by it. This provides an unfair advantage to these organisations who may benefit from non-compliance with the Code.

Short-comings of voluntary Codes were also identified for the Dairy Code and Franchising Code.[149] In both instances, the voluntary nature of these Codes meant that they did not adequately address the structural bargaining power imbalance, and the associated

[140] Terry A, The unusual place of industry codes of conduct in the regulatory framework, UNSW Law Journal, 2022, volume. 45, no. 2, pp. 649–687.
[141] ACMF, Structure of the Industry, 2023, accessed May 2023 < https://www.chicken.org.au/facts-and-figures/>; ACGC, Our Industry, 2023, <https://acgc.org.au/our-industry/>.
[142] ACGC, Submission to the Perishable Agricultural Goods Inquiry, 17 September 2020; VFF, ACCC Perishable Agricultural Goods Inquiry Submission, 2020; NSW Farmers, ACCC Perishable Agriculture Goods Inquiry Submission, September 2020; National Farmers' Federation (NFF), Submission to Australian Competition and Consumer Commission Price Inquiry - Perishable Agricultural Goods, 18 September 2020.
[143] Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015 (Cth)
[144] ACCC, Perishable agricultural goods inquiry, November 2020, p 126.
[145] Ibid, p 126.
[146] Ibid, p 126.
[147] Food and Grocery Code Independent Reviewer Annual Report 2022-23, p 23.
[148] ACCC Submission to Treasury (Cth), Food and Grocery Code of Conduct Review: Final Report, 2018, p. 3
[149] Robert Gardini, Review of the Franchising Code of Practice, October 1994, p 45, 61.

contracting practices in the longer term.[150] Both Codes have subsequently become Mandatory to ensure that benefits from the Code are felt within both industries.[151]

The short-comings of voluntary Codes can be compared to mandatory Codes of Conduct governing processor-grower relationships in the agriculture sector. Australian agriculture currently has four mandatory Codes of Conduct. To date, it has been the view of the Australian Government that Mandatory codes can 'address many of the fundamental problems inherent in industry codes whilst retaining the positive aspects associated with codes-based approaches.'[152] These Mandatory Codes are especially effective where experience has shown 'legislative underpinning is necessary to ensure the effective operation of the code and to achieve the desired change in industry sectors'.[153]

Introducing a Mandatory Code of Conduct that includes clear penalties for contravention provides a clear tool for the Australian Government and ACCC to effectively act on the misuse of market power and exploitation of a lack of market transparency. This position is in line with the ACCC's previous recommendations for Mandatory Codes of Conduct to address market failures in industries that result from a bargaining power imbalance and information asymmetry in grower-processor relationships. Existing provisions of the act do not sufficiently correct these market failures.[154] Similar to that experienced in the dairy industry, a Mandatory Code of Conduct would help to better allocate risk, strengthen competition between processors and support growers make efficient investment decisions.[155] It is clear from this analysis that a Mandatory Code of Conduct is needed to address the issue of market transparency in the poultry meat supply chain and address other competition issues.

Considering these elements, a Mandatory Code of Conduct is the only effective option to address the issues identified in the poultry meat supply chain. If the Australian Government wants to act to address market transparency, economic harm, and market failures in the poultry meat supply chain, it will have to implement a mandatory code of conduct.

[150] ACCC, Dairy Inquiry Final Report, April 2018, p xxiii ('Dairy Inquiry').
[151] Terry A, The unusual place of industry codes of conduct in the regulatory framework, UNSW Law Journal, 2022, volume. 45, no. 2, pp. 649–687.
[152] Regulation Impact Statement, Trade Practices Amendment (Fair Trading) Bill 1997 (Cth) p 4.
[153] Commonwealth, Parliamentary Debates, House of Representatives, 30 September 1997, 8799–802 (Peter Reith, Minister for Workplace Relations and Small Business).
[154] ACCC, Dairy Inquiry Final Report, April 2018, p. 162.
[155] Ibid, p. 162.

Legal Analysis of Proposed Code of Conduct

The NFF commissioned legal analysis of the proposed Code of Conduct. This analysis sought to have an independent assessment and analysis of the proposed Code and ensure it is an effective Code that does not create regulatory burden for participants in the poultry meat supply chain. The findings of this legal analysis are as follows:

1. The Code is to be made by regulations under Section 51AE of the Competition and Consumer Act 2010 (the "Act"). Under Section 51ACAA(1) of the Act an industry code is a code that regulates the conduct of participants of an industry towards other participants in the industry, or towards consumers in the industry. Under Section 51AE of the Act, the regulations may prescribe an industry code and declare it to be a mandatory industry code or a voluntary industry code. In this case the Code is intended to be a mandatory industry code, which must be complied with by all participants to whom it relates.

2. The Code in this case is expressed to apply to processors of meat poultry and growers who provide services to them growing meat poultry. Neither the relevant provisions of the Act nor the proposed regulations limit the scope of the proposed Code. It is however useful to have regard to the report of the Australian Competition and Consumer Commission (ACCC) on the Perishable Agricultural Goods inquiry which examined imbalance of bargaining power in some sectors of the perishable agricultural goods industry, resulting in anti-competitive and harmful conduct, and the extent to which existing regulatory controls address such conduct. The ACCC concluded that there were regulatory gaps, particularly in addressing the specifics of some industries and that mandatory industry codes are a useful tool in dealing with harmful conduct in a focused and specific way in particular industries.

3. It is also useful to have regard to other prescribed industry codes in particular the Dairy Code which is the most recently introduced (as against amendment and updating of some industry codes). The Dairy Code has been used as a base for formulating the proposed meat poultry industry code under consideration. There seem to be good reasons for this, in that the history of industry codes appears to have been evolutionary, and the dairy industry code is the latest iteration. It is also the case that the processor/grower structure of the dairy industry, and issues that arise, have similarities to the meat poultry industry.

4. Preliminary – Section 6

   As has normally been the case with respect to other industry codes, ministerial review of the Code and reports are to take place at intervals in the future to assess how the Code has operated and its impact on the industry. It is obviously important that there should be monitoring of this nature.

5. Part 2 Division 1 Section 8

   Processors which are small businesses are excluded from the operation of the Code, except for the obligations to deal in good faith. Small business is defined as a business with fewer than 15 full time employees. Given the predominantly integrated nature of the meat poultry industry in Australia and the major market share of a very small number of processors. It is likely that the small business exemption will have very little application.

6. Division 2 Subdivision A Section 11

   Processors and meat poultry growers must deal in good faith. The ACCC Perishable Agricultural Goods report canvassed the pros and cons of such provisions which are common to all industry prescribed codes. The possible disadvantage is that the

obligation does not address specific actions or conduct and a party may have difficulty in determining whether the party is in breach of the code. Nevertheless, the ACCC concluded that it supported performance obligations of this nature directed to outcomes, particularly if combined with some process obligations directed to particular actions or conduct which will lead to outcomes. It is common in industry codes, as a guide or an aide in determining whether a party has dealt in good faith, to particularise matters which can be taken into account, and the Code presently under consideration lists several of these specifics included in the equivalent provisions in the Dairy Code, but also some which address particular concerns which have been raised by growers in the meat poultry industry, e.g. whether or not the other party has acted in a way that constitutes retribution against the other party for past complaints, or for acting as a representative in collective dealings with the other party. Similarly, whether or not the other party has sought to transfer commercial risk which would otherwise have been borne by the other party as a consequence of the dealings between the parties. These process type criteria appear to accord with the ACCC's preference for a combination of the overall performance obligation to deal in good faith with process obligations addressing industry specifics.

7. Part 2 Subdivision A Section 12

   This provision endorses the grower's right to act collectively with other growers in dealing with the processor, if permitted to do this under the authorisation and other provisions in the Act relating to collective action. The provision also prohibits growers being subjected to duress in relation to an election to do this. Growers dealing with processors collectively has been part of the meat poultry industry for many years but it is understood that in recent years there have been attempts by some processors to avoid dealing with grower groups collectively and to bring pressure to bear on individual growers to negotiate on a one-on-one basis, particularly in relation to contract terms relating to growing fees. Growers have concerns that individual growers have no ability to question or test the fees and payment terms put forward by processors in this situation. The ACCC has indicated that it considers asymmetry of information to be a harmful aspect of imbalance of bargaining power and recognises the usefulness of collective bargaining to mitigate this.

8. Part 2 Subdivision B Section 13

   Processors are obliged to create a disclosure document to be given to growers entering into or renewing or extending a growing agreement. The information required to be inserted in the disclosure document is listed in Annexure 1 of the Code. Provision of a disclosure document is an important element of the Franchising Code and the concept is a common legislative tool to ensure persons entering into commercial transactions so far as possible have relevant information to inform their decision to proceed, e.g. in relation to retail leases and also property sales.

   The obligation in the present case may be perceived by processors as adding an unnecessary further administrative and compliance burden, but from another perspective it addresses in a positive way information asymmetry issues in processor/grower dealings, which involve complex and industry specific growing agreements. Examples are the requirement to provide details of litigation involving grower agreement issues, the number of mediations and arbitrations in which the processor has been involved, and information relevant to assessment of future earnings including projected bird numbers to be placed together with historical information and payments made in this respect.

9. Part 2 Subdivision C Section 15

   Processors are required to publish compliant standard forms of growing agreements at the beginning of each financial year and these are to include growing fees. Processors may publish more than one standard agreement and may stipulate the circumstances

which will apply to the availability of a particular standard growing agreement. This is intended to allow processors flexibility as to regional fees and a number of other variables which affect the terms of the growing agreements. Processors can enter into non-standard agreements but must first provide the grower with an explanation why the agreement is not in standard terms.

The concept of an obligation to publish standard agreements is borrowed directly from the Dairy Code and is directed both at the lack of transparency about pricing in the market for growing services and other contract issues, and also at the information asymmetry issue. Processors are required to justify the growing fee specified in each standard form including how it takes into account the necessity to provide the grower with a reasonable return over the supply period. This is apparently designed to address the grower perception that imbalance of bargaining powers between growers and processors leads to processors unilaterally dictating growing fees without sufficient regard for the need to pay a fee for service which allows for a reasonable return.

10. Part 2 Subdivision D Section 19 to Section 23

    Growing agreements and variations of growing agreements must be in writing. There are similar provisions in most industry codes.

    Birds are not to be placed on a grower's property unless pursuant to a written growing agreement. There have been instances in recent years of farms being placed by a processor after the grower's growing agreement has been terminated, or has expired, and in some cases on the basis of an assurance that a growing agreement will be provided in due course. Section 21 is directed to the latter situation and also to the situation where a grower constructs a new farm for a processor on the basis that a growing agreement will be entered into when construction is completed. In some instances there has not been a sufficient written agreement. Section 21 requires written records of unwritten agreements to enter into growing agreements.

11. Part 2 Subdivision E Section 24 to Section 33

    This subdivision contains provisions setting out requirement in relation to a number of terms and conditions contained in growing agreements, most of these relating to issues which have historically been contentious between processors and growers.

    The most significant are as follows:

    i. Agreements must have a term (i.e. duration) which is not less than the longer of:

       Firstly, a period sufficient to amortise over the term the cost of any capital works required by the processor before or during the term, plus obtain a reasonable return, and

       Secondly, 10 years.

       The grower can request a shorter term.

       Processors wishing to preserve flexibility have been reluctant to offer extended agreement terms and have commonly offered as standard 5 years for existing terms and 10 years for new greenfield farms. Growers have become increasingly concerned about this issue because of the magnitude of the capital costs now required to establish a new farm with the necessary shedding and facilities or to acquire an existing farm. Historically, the length of the term of agreements was not a great issue as agreements were in nearly all cases renewed. The volatility of the industry in recent years has meant that growers can only work on the basis of the current agreement and cannot rely on successive renewals.

Imbalance of bargaining power has led to growers uncertainty about the length of the terms of agreements, and the result of this uncertainty is likely to be under investment in farms and their facilities. This has been identified by the ACCC as a harmful effect which can result from the imbalance of bargaining power.

ii. Variations in number of batches annually placed, the density level of batch placements (i.e. the number of hatchlings placed) and mortality rates (i.e. the number of birds lost during a batch) can lead to unpredictable and uncertain fluctuations in payments made to growers under growing agreements, and this impedes grower investment decisions. Historically, it has normally been the case that processors growing agreements specify the projected batch rates, density levels and mortality rates which the quantum of the growing fees assumes, and provide for compensatory adjustment of growing fees for variations, insofar as these variables are under processor control. The Code requires provisions to this effect as in recent years there has been erosion of the acceptance of this concept, in some cases by a reason of growing fees being only partly calculated on a per bird basis, and in other cases by reason of processors wishing to achieve greater agility in their production to advantage them in their markets. Unpredictable fluctuations in grower incomes erode growers' certainty.

iii. The Code mandates inclusion of provisions requiring periodic reviews of growing fees and specification of the review methodology. The Code further requires reviews to consider growers fixed and variable costs and return on capital investment. Growing fees are commonly split into these components but in some cases processors have been exerting downward pressure on review of the capital component. These provisions of the Code are directed at ensuring the integrity of reviews and that reviews are related to appropriate criteria.

iv. Section 28(6) relates to provisions in growing agreements which enable processors to adjust a grower's batch payment so that instead of a batch payment calculated on the basis of the specified growing fee the amount paid by the processor is an adjusted higher or lower amount, the adjustment being based on an evaluation of the grower's growing performance with respect to the batch, usually measured in terms of the amount of feed consumed by the birds and their weight when collected. Most commonly the evaluation is done by comparison with the performances of other growers raising batches in the same timeframe. Traditionally, these adjustments were carried out by means of "pool schemes", which had their origin in the statutory regulated systems under which the industry operated until the late 1990's. Growing fees for all growers were centrally determined under the regulated systems, but to provide incentive for good performance, growers and processors in most cases agreed that the total pool of growing fees payable to all growers in a batch cycle could be pooled and redistributed to the growers in accordance with a comparison of their relevant feed conversion performances. In simplified terms, this involved a mid-point which was the standard fee otherwise payable. It was acknowledged that growers essentially had ownership of the pools because it comprised the standard fees otherwise compulsorily payable to them.

Since deregulation, payment adjustment schemes related to performance have become problematic although most processors incorporate them in growing agreements. There are a number of variations in how such schemes operate, however usually still on the basis of comparison of performances of a number of growers. There is a lot of grower dissatisfaction across the industry with the operation of the schemes, still generally referred to in a generic manner as "pools". Common complaints are lack of information and transparency about the operation of the scheme and calculation of payments, inequalities in processor inputs essential to the integrity of comparisons, and inability to control whether a grower's performance should be excluded from the calculation because the grower's growing performance has been distorted by factors beyond his control.

One view has been that incentive schemes should be confined to schemes providing for payment of bonuses payable above the standard fee for above average or other superior performance. The processor's point of view would likely be that such a scheme would protect lazy performance although providing some incentive for good performance. There are problems in ensuring the fairness of "bonus" schemes, particularly where the benchmark is set.

The fact is that payment adjustment schemes, normally by comparison of the performances of a group of growers, have become entrenched in the industry. The approach adopted in the Code is to avoid seeking to radically re-write payments schemes across the industry and to endeavour to tighten up the operation of the schemes in place to ensure their integrity. In the last resort, if grower dissatisfaction is sufficiently widespread, the Code provides that the scheme will be suspended or discontinued if a majority of a processor's growers vote to this effect. This recognises that growing agreements specify growing fees which are periodically reviewed and adjusted, invariably by an increase. These are the numbers used by a grower and financiers in projections at the commencement of the agreement. Opaqueness and uncertainty about the amounts that will be paid hinder the efficient operation of the industry.

12. Part 2 Subdivision E Section 32

The Code provides that growing agreements can only be unilaterally suspended or terminated by a party as provided in the agreement and that such provisions in a growing agreement may only permit suspension or termination in circumstances specified in the Code. Apart from termination on the basis of material breach of the agreement by the grower or a force majeure situation, the processor may give not less than 12 months notice of termination if the processor intends to cease primary processing at the processing plant servicing the grower. However, on termination in such circumstances the processor must compensate the grower by payment of the estimated present value of the grower's growing agreement, less estimated batch costs for the balance of the term of the agreement. This recognises the growers resulting inability to utilise the grower's capital investment because in most cases there is no alternative processor for the grower. There have been plant closures in recent years. The possibility of termination without compensation creates uncertainty about investment.

Uncertainty has also been created in recent years by provisions in growing agreements which allow a processor to suspend the growing agreement in generalised and non-specific circumstances, possibly on the basis of commercial considerations. This appears to constitute a shifting of commercial risk to growers. The Code provisions also address this uncertainty.

A grower may unilaterally terminate the growing agreement on 6 months' notice if the grower intends that the property will cease to be used for the purpose of raising meat poultry. The grower's rationale for this is that, particularly in the case of smaller family operated older farms, the grower may wish to retire or in some cases land values for development have made it uneconomic to continue to use the property for raising meat poultry. Over the years similar provisions have appeared in a number of processor's growing agreements.

13. Part 2 Subdivision F Section 34

The Code provides that if the grower wishes to sell the grower's property to a purchaser with the benefit of the growing agreement, the processor must not refuse consent to an assignment of the growing agreement to the purchaser unless the processor reasonably considers that the purchaser does not have the resources or capacity to perform the obligations of the growing agreement. In addition, the processor must not impose conditions on consent which require capital works to be carried out.

Processors have from time to time perceived a request for consent to an assignment of the growing agreement as an opportunity to require significant upgrades of the property and facilities. In addition, in some instances processors have specified in growing agreements a number of restrictive circumstances, any of which if applicable will be deemed to render a refusal to consent to assignment as being not unreasonable.

Unreasonable restriction on a grower's ability to sell the grower's property as a going concern discourages investment in the industry. In these provisions the Code seeks to address this.

14. Part 2 Subdivision G Section 40 to Section 51

    This subdivision sets out a dispute resolution process including consultation between the parties to resolve a dispute and if necessary mediation and ultimately arbitration.

    A major objective of all of the relevant industry codes is to provide an industry specific dispute resolution process to resolve disputes between the parties. The provisions of the proposed code are very similar to those in the Dairy Code.

    Ever since deregulation it has been a concern of growers that for most, the legal system and litigation offer no realistic means of resolving disputes, as in their perception, processors can always outspend them. The fact that the length of the terms of the growing agreements are such that growing agreements normally have to be renewed in the foreseeable future, also causes grower trepidation about taking action. This situation further entrenches imbalance of bargaining power and the harmful practices which result. There are no perfect solutions to this problem but the Code attempts to provide a process, so far as is possible accessible to growers, which will provide a final resolution of disputes. Under the Dairy Code arbitration is an option if agreed. Under this Code growing agreements must comply with the Code and include arbitration as a final and binding solution. Processor growing agreements have in the past included similar requirements for arbitration or expert determination as a final and final binding decision. Under the Code the arbitrator is to endeavour to minimise formalities and to make the arbitration as accessible as possible to growers.

    The dispute resolution process can be activated by grower collective representatives, which reduces individual grower exposure.

15. Part 3 Division 1 Section 57

    These are transition provisions applying to existing growing agreements and providing for a transition period of one year. Most of the relevant industry codes have transition provisions in relation to the application of the Code.

    The Dairy Code simply requires that all agreements must be compliant with the Code at the end of the transition period and the processor will be in contravention if the agreement does not. However, the proposed Code under consideration has regard to the difficulties of such a requirement in the meat poultry industry where growing agreements are relatively long term and existing agreements would have to be replaced.

    Under this Code, the requirement of the parties to deal with each other in good faith applies to all existing growing agreement, but during the transition period the other provisions of the Code do not apply to such agreements. At the end of the transition period all provisions of the Code will apply and the processor will have breached the Code if the agreement does not comply, unless the processor has made a written offer to the grower to vary the existing agreement to make it compliant or to replace it with a new compliant agreement otherwise on the same terms, and this has not occurred because the grower has rejected the offer or failed to accept it before the end of the transition period. There is a precedent for such variation or replacement in the growing agreements of one processor some years ago when it was anticipated that a new

growing agreement, to apply nationally, would be negotiated and would come into effect at a later date, after the agreement was signed.

16. Conclusion

The Code is consistent with the views of the ACCC with respect to how mandatory industry codes can be introduced to address in an industry specific way harmful conduct which emanates from imbalance of bargaining power and leads to inefficiencies and lack of investment in the industry. This Code contains general performance obligations combined with a range of process obligations directed to specific contentious issues between processors and growers, which are considered to be inefficient outcomes of imbalance of bargaining power. Amongst other things the Code attempts to address lack of transparency in pricing and other agreement terms, and asymmetry of information issues which exacerbate imbalance of bargaining power.

Undoubtedly the Code imposes a number of additional compliance issues, for the most part on processors, and requires changes in the way processors will operate, but the view which the Code endorses is that this is the price which must be paid to mitigate the effects of imbalance of bargaining power and its harmful outcomes.

PART 7 – Conclusion

This report concludes that the most effective tool for addressing the multitude of issues in the Australian poultry meat supply chain is the implementation of a Mandatory Code of Conduct. This conclusion is drawn from an extensive analysis of the current market dynamics, legislative possibilities, and the effectiveness of various regulatory tools. The report recognizes the significant market failures, such as asymmetric information and imperfect competition, that have led to economic harms and power imbalances within the industry. These challenges are beyond the scope of what current legislation can effectively address, as legislative solutions are often slow and resource-intensive, and may not capture all the complexities of the supply chain, particularly in areas like contract conditions and negotiation processes.

The proposed Code of Conduct is designed to set minimum standards of behavior and improve market transparency. It aims to mitigate the negative impacts of market concentration and address the lack of sufficient disclosure of business information, difficulties in negotiating fair trading terms, and the lack of clarity and transparency in trading terms. The Code is structured to include both general and specific provisions, with the former encompassing the nature of the Code (mandatory or voluntary), mechanisms for review and update, good faith in negotiations, effective dispute resolution, and penalties for breaches. The specific provisions are tailored to the unique circumstances of the poultry meat supply chain and include standards for supply/trade agreements, price transparency, and conditions under which contracts can be varied or terminated.

In advocating for a mandatory Code of Conduct, the report draws on comparisons with other industry codes, such as the Dairy Code, highlighting the similarities in structure and issues between the dairy and poultry meat industries. The analysis within the report suggests that mandatory codes, as opposed to voluntary ones, are more effective in addressing the fundamental problems of market failures and transparency issues. This is primarily due to the enforceability and compliance mechanisms inherent in mandatory codes, which are backed by penalties for non-compliance.

The legal analysis of the proposed Code confirms its potential effectiveness in regulating the conduct of participants in the poultry meat industry without imposing an excessive regulatory burden. This includes ensuring good faith dealings, facilitating collective bargaining, mandating disclosure requirements, standardizing form agreements, and establishing clear written agreements. The Code also addresses the terms of growing agreements and sets out a comprehensive dispute resolution process, designed to be accessible and fair to all parties involved.

This report underscores the necessity of a mandatory Code of Conduct to rectify the prevalent issues in the Australian poultry meat supply chain. This Code is envisaged as a robust framework to enhance market transparency, equalize the power dynamics between various stakeholders, and foster a fairer and more efficient industry environment.

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Appendices

Appendix 1 – Overview of the Project Advisory Committee

Project Advisory Committee.

The NFF established a Project Advisory to provide high-level advice on the delivery of the project. This committee provided strategic oversight of the project to ensure it delivers agreed outputs, achieves intended outcomes, and adopts a culture of continuous improvement. The Advisory Committee was established following contract agreement between the NFF and the Department of Agriculture, Fisheries and Forestry.

This committee was made up of representatives across the supply chain to provide holistic insights.

Membership of the committee included:

- National Farmers Federation
- NSW Farmers
- Victorian Farmers Federation
- Australian Chicken Growers Council
- Mr Chris Turner (representing the Australian Poultry Industry Association)
- The ACCC (Observer)
- Department of Agriculture, Fisheries and Forestry (Observer)
- Coles (Observer)
- Woolworths (Observer)
- Aldi (Observer)

The Advisory Committee has met four times:

- 6 December 2022
- 28 April 2023
- 10 August 2023
- 24 November 2023

Any member could ask for a meeting to be held at any time to discuss issues with the project. The Advisory Committee provided extensive advice, and also had direct input on industry consultation including surveys for processors and growers, face to face workshops for processors and growers and other parties as needed. The Advisory Committee also reviewed the NFF's policy analysis of the poultry meat supply chain. All feedback from the Advisory Committee was reviewed and incorporated into the policy analysis which forms part of this report.

None of the Advisory Committee members' organisations were fettered in any way from expressing their views in Committee (and many did so with gusto). Each of the organisations represented continued to develop their own policy and prosecuted that policy as they saw fit.

The NFF has organised two additional Advisory Committee meetings to consider the findings of the Interim Report. These meetings will be held on:

- 18 January 2024
- 9 February 2024

Advisory Committee

Terms of Reference

Overview

The National Farmers' Federation (NFF) has been contracted to deliver the Improving market transparency in Australian poultry meat supply chains project (the project) on behalf of the Australia Government. This project will review policies, structure and legal affairs of Australia's poultry meat industry and supply chain.
As part of project delivery, the NFF will establish the project Advisory Committee. This committee will provide strategic oversight of the project to ensure it delivers agreed outputs, achieves intended outcomes, and adopts a culture of continuous improvement.
The Advisory Committee will be established following contract agreement between the NFF and the Department of Agriculture, Fisheries and Forestry. It will meet quarterly throughout the project period, which will conclude no later than June 2024.

Responsibilities

The Advisory Committee will provide high-level, strategic advice to the project and will be responsible for:

- advising the NFF on the project's performance against scope, outcomes and deliverables;
- reviewing the adequacy of ongoing program activities and stakeholder engagement;
- reviewing ongoing monitoring and evaluation; and
- advise on changes to the program and how the program can be adjusted to facilitate continued success.

Where possible, the NFF will provide the Advisory Committee with milestone and reporting documents. This will allow the committee to be fully informed about the program's progress and the NFF's reporting against milestones. The committee will provide an advisory function, with committee views faithfully represented in any final project report; it is not a decision-making body.

Membership

The NFF has invited stakeholders and relevant industry organisations from across Australian poultry meat supply chains to nominate a representative(s) to participate on the Advisory Committee. This includes, but is not limited to:

- Australian Chicken Growers' Council
- Australian Chicken Meat Federation
- Australian Poultry Industries Association
- NSW Farmers
- Victorian Farmers Federation

Additionally, representatives of the following organisations have been invited to attend the Advisory Committee in an observer capacity:

- The Department of Agriculture, Fisheries and Forestry
- Australian Competition and Consumer Commission
- Retailers: Coles, Woolworths, Aldi

Each organisation is responsible for appointing its representative. Observers or alternate representatives from these stakeholder sectors and organisations can attend meetings without prior approval.

The NFF will Chair the Advisory Committee and is responsible for setting the agenda for each meeting.

Secretariat and Meeting Frequency

The NFF will provide secretariat services to the Committee.
The Advisory Committee will meet quarterly unless otherwise agreed by the committee. Advisory Committee meetings will be held virtually.
The first meeting of the Advisory Committee will be held on **Tuesday 6 December 2022.**

Appendix 2 – Grower survey questions

Grower Survey-Improving Poultry Meat Market Transparency

Grower Survey

This Survey is designed to capture growers response to questions around contracts, market imbalance and the perception of where the power lies in the poultry meat industry. To protect data integrity, this survey can only be completed once by each user, so please ensure you have answered all the questions as fully as possible before submitting. This survey is being conducted by NSW Farmers' Association as part of a project being delivered by the National Farmers' Federation in response to the ACCC Perishable Agricultural Goods Inquiry. The project is being funded by the Australian Government. More information about the Inquiry can be found here.

Please note that the information gathered herein is only used by the author to inform the Poultry Meat Market Transparency Project, and can in no way link the respondent back to a processor, either in an individual, or an aggregated format. For a copy of the relevant privacy policies, please click here and here.

* 1. In which State/Territory is your business based

- ◯ QLD
- ◯ NSW
- ◯ ACT
- ◯ VIC
- ◯ TAS
- ◯ SA
- ◯ WA
- ◯ NT

* 2. Please describe briefly the relationship between your business and suppliers in the poultry meat industry.

* 3. How would you describe the relationship between you and your relevant processor?

Negative Relationship | Neither Positive or Negative | Positive Relationship

* 4. Is there an alternative processor to your current processor available in your region?

- ◯ Yes
- ◯ No

Grower Survey-Improving Poultry Meat Market Transparency

5. If you Answered "Yes" to Q4, are you easily able to compare processors in terms of contract offerings, price, and other considerations?

- ◯ Yes
- ◯ No

* 6. Do you perceive that there is a power imbalance between growers and processors? If so, where do you think the imbalance lies, and what is the level of imbalance? Move the slider to where you think is most the appropriate balance of power between growers and processors.

Highly favouring grower | No Imbalance | Highly favouring processor

* 7. If there is an imbalance, does the imbalance impact the terms of your contract with your processor?

- ◯ Yes
- ◯ No

* 8. If there is an imbalance between grower and processors, have you seen this exercised in the past 5 years?

- ◯ Yes
- ◯ No
- ◯ Unsure

Grower Survey-Improving Poultry Meat Market Transparency

* 9. What are some of the behaviours that you have experienced in the last five (5) years, or two contract agreements(whichever is the longer period). Tick all that apply.

- [ ] Contract duration that does not allow you sufficient enough time to obtain a return on investment
- [ ] Requirements for capital investments without any commercial considerations for growers
- [ ] Requirements to pay indemnities insurance under circumstances which cover the processor
- [ ] a lack of transparency in regard to any financial penalties or fines imposed
- [ ] An absence of dispute resolution mechanisms
- [ ] Prices set according to a growers relative performance to another grower, where that performance is determined by factors outside the growers control
- [ ] Prices set with little visibility by growers as to how they were determined, such as how their performance relative to other growers is determined
- [ ] Unilateral termination clauses (i.e one party has the power to terminate the contract)
- [ ] Other (please specify)
- [ ] Unilateral alteration of contracts by processors
- [ ] Unilateral alteration of prices by processors
- [ ] Unilateral alteration of contracts by growers
- [ ] Unilateral alteration of prices by growers
- [ ] Processors control of growers production and commercial data, including growers costs of production
- [ ] None of the above
- [ ] All of the above

* 10. Do Contract terms have any of the following impacts on your business? Tick as many boxes as apply to your business.

- [ ] Inability to switch between processors
- [ ] Inability to compare prices between different processors
- [ ] Lack of business confidence and certainty to invest in business improvements
- [ ] Missed productivity through reduced investment due to uncertainty of contracts.
- [ ] Costs increasing at a faster rate than returns resulting in losses
- [ ] Retribution (or fear of) from reporting unfair conduct
- [ ] High levels of business risk from price uncertainty and potential financial penalities
- [ ] No flexibility in decision-making to improve business operations and profitability
- [ ] All of the above

Other (please specify)

* 11. What in your view, would improve the transparency & operation of the price and payment system that you have with your processor? (ie. The Pool payment system)

* 12. What elements of your contract or relationship with processors are positive? List them below.

Grower Survey-Improving Poultry Meat Market Transparency

13. What knowledge would help to improve price and market transparency for your business? Tick all that apply.

- [ ] Prices at different levels of the supply chain
- [ ] Production of supply levels and trends
- [ ] Consumption or demand levels and trends
- [ ] External factors affecting market dynamics
- [ ] Specification of quality and quantity requirements, including the circumstances under which rejection occurs

14. What technologies would help to improve price and market transparency for your business? Tick all that apply.

- [ ] Portal to enable a better understanding of how pricing works and the factors affecting chicken prices offered to growers across Australia
- [ ] A single source of verified information on prices available to growers in each region

15. What products or processes would help to improve price and market transparency for your business? Tick all that apply

- [ ] Processors provide a standard form supply agreement that is publicly available, allowing growers to compare contracts more easily
- [ ] An anonymous complaints portal and an independent dispute resolution process
- [ ] Prevention of any party unilaterally altering or terminating a supply agreement without any negotiation
- [ ] Cooling-off period after signature of an agreement, during which growers can cancel an agreement without penalty
- [ ] Make pricing arrangements clearer, including processors providing minimum prices and specifying how prices will be determined, and when prices will be determined (e.g. before or upon delivery)
- [ ] Changes to pooling arrangements, including increasing transparency of the number and types of farmers in each pool, prevention of changes to a pool once it is set, and giving some control back to growers
- [ ] Other (please specify)

  _____
- [ ] All of the above

Grower Survey-Improving Poultry Meat Market Transparency

* 16. Are you aware of the role of an Industry Code of Conduct and what changes this could mean for your business and the relationship between you and the processor you have a contract with?

- ◯ Yes
- ◯ No
- ◯ Unsure

Grower Survey-Improving Poultry Meat Market Transparency

17. If you answered "Yes" to the previous question, how do you percieve a Code of Conduct would change the relationship between you and your relevant processor?

* 18. Do you have any other proposed solutions that may address the perceived power imbalance in the poultry meat supply chain , or any other comments you would like to make in relation to contracts and conduct?

19. Have you answered all of the above questions fully and to the best of your knowledge? Please note that once you press the submit button, you will be unable to return to the survey to change any answers.

- ◯ Yes
- ◯ No

Appendix 3 – Processor survey questions

Processor Survey- Improving Poultry Meat Market Transparency

Processor Survey

This Survey is designed to capture processors responses to questions around contracts, market imbalance and the perception of where the power lies in the poultry meat industry.To protect data integrity, this survey can only be completed once by each user, so please ensure you have answered all the questions as fully as possible. This survey is being conducted by NSW Farmers' Association as part of a project being delivered by the National Farmers' Federation in response to the ACCC Perishable Agricultural Goods Inquiry. The project is being funded by the Australian Government. More information about the Inquiry can be found here.

Please note that the information gathered herein is only used by the author to inform the Poultry Meat Market Transparency Project, and can in no way identify the respondent, either in an individual, or an aggregated format. For a copy of the relevant privacy policies, please click here and here.

* 1. In which State/Territory is your business based

- ◯ QLD
- ◯ NSW
- ◯ ACT
- ◯ VIC
- ◯ TAS
- ◯ SA
- ◯ WA
- ◯ NT
- ◯ All of the above

* 2. How would you describe the power balance between you and the growers you have a contract with?

Significantly grower favoured | No imbalance | Significantly processor favoured

* 3. Please explain your reasoning for your response to the question above.

* 4. Have you had your contract structures reviewed by the ACCC?

- ◯ Yes, no amendments were made following review
- ◯ Yes, minor amendments were made following review
- ◯ Yes, significant amendments were made following review
- ◯ No

Processor Survey- Improving Poultry Meat Market Transparency

* 5. What would improve the operation of the price and payment system you have with growers?

* 6. What measures would you support to manage any market power issues?

* 7. What would improve the operation of the price and payment system that you have with your growers?

Processor Survey- Improving Poultry Meat Market Transparency

* 8. What knowledge would help to improve price and market transparency for your business? Tick all that apply.

- [ ] Prices at different levels of the supply chain
- [ ] External factors affecting market dynamics
- [ ] Production of supply levels and trends
- [ ] Specification of quality and quantity requirements, including the circumstances under which rejection occurs
- [ ] Consumption or demand levels and trends
- [ ] Other (please specify)

- [ ] All of the above

* 9. What technologies would help to improve price and market transparency for your business?

- [ ] Portal to enable a better understanding of how pricing works and the factors affecting chicken prices offered to growers across Australia
- [ ] A single source of verified information on prices available to growers in each region
- [ ] Other (please specify)

* 10. What products or processes would help to improve price and market transparency for your business? Tick all that apply

- [ ] Processors providing a standard form supply agreement that is publicly available, allowing growers to compare contracts more easily
- [ ] An anonymous complaints portal and an independent dispute resolution process
- [ ] Prevention of any party unilaterally altering or terminating a supply agreement without any negotiation
- [ ] Cooling-off period after signature of an agreement, during which growers can cancel an agreement without penalty
- [ ] Make pricing arrangements clearer, including processors providing minimum prices and specifying how prices will be determined, and when prices will be determined (e.g. before or upon delivery)
- [ ] Changes to pooling arrangements, including increasing transparency of the number and types of farmers in each pool, prevention of changes to a pool once it is set, and giving some control to growers
- [ ] Other (please specify)

Processor Survey- Improving Poultry Meat Market Transparency

* 11. What elements of your contract or relationship with growers are positive?

* 12. What changes has your business made to improve price and market transparency in the poultry meat sector? For example, knowledge sharing, technologies, products or processes?

* 13. Are you aware of the role of an Industry Code of Conduct and the changes this would mean for your business and the relationship between you and the growers you have a contract with?

- ◯ Yes
- ◯ No
- ◯ Unsure

14. What changes could an Industry Code of Conduct mean for your business?

Processor Survey- Improving Poultry Meat Market Transparency

* 15. How could an Industry Code of Conduct change the relationship between you and your relevant growers?

* 16. Do you have any other proposed solutions to improve price and market transparency in the poultry meat industry?

17. Have you answered all of the above questions fully and to the best of your knowledge? Please note that once you press the submit button, you will be unable to return to the survey to change any answers.

- ◯ Yes
- ◯ No

Appendix 4 - Proposed Code of Conduct

Competition and Consumer (Industry Codes—Meat Poultry) Regulations 23XXXXXX

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated XXXXXX

David Hurley
Governor-General

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Part 1—Preliminary

1 Name

This instrument is the *Competition and Consumer (Industry Codes—Meat Poultry) Regulations XXXXXX*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Provisions	**Commencement**	**Date/Details**
1. The whole of this instrument	XXXXXX.	XXXXXX

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

4 Simplified outline of this instrument

Part 2 prescribes a mandatory industry code in relation to processors of meat poultry and growers who provide services to them growing meat poultry.

Under the Code:

(a) processors and growers must deal with each other in good faith (see section 11); and

(b) processors must provide a disclosure document (see Subdivision B of Part 2, Section 55 and Annexure 1); and

(c) processors must publish standard forms of meat poultry growing agreements on or before each 1 June annually (see section 12); and

(d) processors must only engage growers' services under meat poultry growing agreements that are in writing (or recorded in writing) and that comply with the requirements of the Code (see Subdivisions C and D of Division 2 of Part 2);

(e) neither a processor nor a grower may unilaterally terminate or suspend a meat poultry growing agreement except as provided in the meat poultry growing agreement (see section 32);

(f) complaints and disputes arising under or in connection with a meat poultry growing agreement may be dealt with and resolved in accordance with the dispute resolution procedure provided in the agreement which includes mediation and arbitration (see Subdivision G of Division 2 of Part 2); and

(g) grower's right to transfer farm ownership and assign meat poultry growing agreement (see section 34); and

(h) processor's and grower's obligations to keep records and to make reports (see Subdivision B of Part 2); and

(i) growers to be recompensed if significant capital expenditure required by processors during the term of the meat poultry growing agreement, or on renewal (see Section 34).

The Code, other than the obligation to deal in good faith, does not apply to processors that are small business entities (see section 8).

Note: Part VIIA of the Act empowers the Commission to monitor prices in those markets where, in the view of the Minister, competitive pressures are not sufficient to achieve efficient prices and protect consumers.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:
(a) Commission;
(b) corporation;
© trade or commerce.

In this instrument:

Act means the *Competition and Consumer Act 2010*.

Agriculture Minister means the Minister administering the *XXXXXx*.

arbitration adviser means the person appointed under subsection 42(1).

arbitrator means a person included in a list compiled under subsection 42(2).

batch means the time period between the date when hatchlings are placed on a grower's property and the date that the last poultry is harvested for processing.

batch rate means the number of batches placed with a Grower in a period of one year.

capital expenditure means funds used to acquire, build, upgrade, improve or maintain physical assets such as buildings, technology or equipment on a farm, and includes expenditure against future emergency management, carbon management and energy management.

Code means the industry code set out in Division 2 of Part 2.

cooling-off period: see subsection 26(2).

density level means in relation to a batch the number of hatchlings placed per square metre of the Grower's shedding area.

dispute means a dispute between the parties to a meat poultry growing agreement in relation to a matter arising under or in connection with the agreement.
Note An example of a matter arising in connection with a meat poultry growing agreement is the termination of the agreement.

Food and Grocery Code of Conduct means Schedule 1 to the *Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015*.

grower means a person that provides labour, shedding, land, and fixed inputs including but not limited to power, water, bedding and other inputs for the growing of meat poultry, but not ownership of the birds or provision of feed or veterinary services.

growing fees means the amounts payable by the processor to the grower with respect to each batch under a meat poultry growing agreement in consideration of the growing services provided by the grower.

hatchling means a one-day old meat chicken or turkey that is fit and healthy enough to be transported and placed onto a grower's farm

industry code has the meaning given by subsection 51ACA(1) of the Act.

meat poultry means a chicken or turkey that is genetically selected for meat consumption and not for egg production

meat poultry growing agreement means a contract between a processor and a grower for the supply of inputs and services to grow meat poultry from hatchling to market weight.

mediation adviser means the person appointed under subsection 41(1).

mediator means a person included in a list compiled under subsection 41(2).

mortality rate means in relation to a batch is the percentage difference between the number of hatchlings placed with the Grower and the number of birds collected from the Grower by the Processor.

payment adjustment scheme means any provisions in a growing agreement which enable the processor to adjust payments that would otherwise be made to the grower with respect to a batch, by measuring or evaluating the grower's growing performance with respect to the batch, whether by means of a formula, other calculation or other criteria.

processor means a corporation that purchases, or that may purchase, growing services from Growers whether or not the corporation processes meat poultry.

Example: Some processors processing activities and grower management activities are run under separate corporate structures.

Note: For the extended application of this instrument to processors who are not corporations, see section 6 of the Act.

publication deadline: see subsection 15(1).

purchase means purchase in trade or commerce.

region means the area served by a primary processing plant of a processor.

small business: means a small business with fewer than 15 full time employees.

supply means supply (within the meaning of the Act) in trade or commerce.

supply period: see section 24.

6 Reviews

(1) The Agriculture Minister must ensure that 2 reviews of this instrument are undertaken.

Commencement of reviews

(2) The first review must commence on or around the second anniversary of the commencement of these regulations.

(3) The second review must commence on or after the sixth anniversary of the commencement of these regulations, or earlier if the Minister is notified that growers are being disadvantaged by these regulations or by processor's actions under these regulations.

Conduct of reviews

(4) Each review must assess the role, impact and operation of this instrument.

(5) Without limiting subsection (4), the first review must consider the role, impact and operation of the Code in relation to meat poultry growing agreements entered into before and after the commencement of these regulations

(6) Each review must include consultation with stakeholders in the meat poultry industry, including the following:

(a) growers;

(b) processors;

(c) industry representative bodies;

(d) relevant government agencies;

(e) consumer organisations.

Reports of reviews

(7) The Agriculture Minister must ensure that a written report of each review is prepared.

(8) The Agriculture Minister must, on or before 30 months after commencement of these regulations, give a copy of the report of the first review to the Minister administering section 51AE of the Act.

(9) The Agriculture Minister must, on or before 78 months after commencement of these regulations, give a copy of the report of the second review to the Minister administering section 51AE of the Act.

Part 2—Meat Poultry Industry Code

Division 1—Introduction

7 Mandatory industry code in Division 2

For the purposes of section 51AE of the Act, the industry code set out in Division 2 of this Part:

(a) is prescribed for the purposes of Part IVB of the Act; and

(b) is declared to be a mandatory industry code.

8 Exception for processors that are small businesses

(1) If a processor is a small business for a financial year:

(a) section 15 (requirement to publish standard forms of agreements) does not apply to the processor in relation to the publication deadline in the financial year; and

(b) Subdivision C of Division 2 (standard forms of agreements) (other than section12) does not apply in relation to the processor in the financial year; and

(c) Subdivisions D to I of Division 2 (other provisions relating to meat poultry growing agreements) (other than section15) do not apply in relation to a meat poultry growing agreement that the processor enters into in the financial year.

Extensions of meat poultry growing agreements

(2) If:

(a) a meat poultry growing agreement is varied at a particular time; and

(b) the variation postpones the end of the supply period of the agreement;

this section applies in relation to the agreement from that particular time as if it was a new agreement entered into at that particular time.

9 Obligations of meat poultry growers

A reference to a meat poultry grower is a reference to a meat poultry grower that is a corporation.

Note: For the extended application of those provisions to meat poultry growers who are not corporations, see section 6 of the Act.

10 Interaction with Food and Grocery Code of Conduct

The Food and Grocery Code of Conduct does not apply to the extent that it conflicts with Division 2 of this Part.

Division 2—Meat Poultry Industry Code

Subdivision A—Processors and meat poultry growers must deal in good faith

11 Obligation to deal in good faith

(1) A processor must at all times deal with meat poultry growers in good faith, within the meaning of the unwritten law as in force from time to time, in relation to the supply of growing services and other inputs for meat poultry.

Civil penalty:

(a) if the processor is a small business for the financial year in which the contravention occurs—200 penalty units; or

(b) otherwise—600 penalty units.

(2) A meat poultry grower must at all times deal with processors in good faith, within the meaning of the unwritten law as in force from time to time, in relation to the supply of growing services and other inputs for meat poultry.

Civil penalty: 100 penalty units.

(3) Without limiting subsections (1) and (2), those subsections apply in relation to the following:

(a) negotiating or entering into a meat poultry growing agreement;

(b) exercising rights, or performing obligations, under a meat poultry growing agreement;

(c) dealing with or resolving complaints or disputes arising under or in connection with a meat poultry growing agreement;

(d) varying or terminating a meat poultry growing agreement.

(e) allowing the transfer of the meat poultry growing agreement to another party

(4) In determining whether a processor or meat poultry grower (the *first party*) has acted in good faith in dealing with a meat poultry grower or processor (the *other party*), the following may be taken into account:

(a) whether the first party has acted honestly;

(b) whether the first party has tried to cooperate with the other party to achieve the purposes of any relevant meat poultry growing agreement;

(c) whether the first party has not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;

(d) whether the first party has not acted in a way that constitutes retribution against the other party for past complaints or disputes, or for acting as a representative in collective dealings with the first party;

(e) whether the first party's relationship with the other party has been conducted without duress;

(f) whether the first party has sought to transfer to the other party commercial risk which would otherwise be borne by the first party as a consequence of the dealings between the parties;

(g) whether the first party's relationship with the other party has been conducted in recognition of the need for certainty regarding the risks and costs of supplying or growing meat poultry and inputs in growing meat poultry;

(h) whether the first party has undermined, or denied the other party, a benefit of any relevant meat poultry growing agreement;

(i) whether, in dealing with the first party, the other party has acted in good faith.

(5) Subsection (4) does not limit subsections (1) and (2).

12 Negotiation and Dealing with Processor Using Representatives

(1) In negotiating terms and conditions, and in relation to any matters arising under a grower's contract or under this Code, the grower must be permitted to join with other growers and to negotiate and deal with the processor collectively

through representatives appointed by the growers acting collectively provided that:

(a) the grower elects to do this and notifies the processor in writing; and

(b) the collective action is not in breach of the Act.

(2) The grower must not be subjected to duress with respect to an election to negotiate collectively whether before or after making an election and must not be offered any inducement not to make such an election.

(3) A grower or group of growers may elect to have a third party advisor or negotiator act on their behalf which may include a union delegate, professional expert or negotiator, provided that:

(a) the grower or grower group has notified the processor in writing

(b) the grower or grower group notified the processor in writing after the meeting or negotiation that they have been fully informed by the third party

(c) in the case of a group of growers, their collective action is not in breach of the Act.

Subdivision B – Processors must provide a Disclosure Document

13 Processor must maintain a disclosure document

Disclosure document to inform grower or prospective grower

(1) A Processor must create a document (a *disclosure document*) that complies with subclauses (3), (4) and (5).

Civil penalty: 600 penalty units.

(2) The purpose of a disclosure document is to:

(a) give a prospective grower, or a grower proposing to:

(i) enter into a meat poultry growing agreement; or

(ii) renew a meat poultry growing agreement; or

(iii) extend the term or scope of a meat poultry growing agreement;

...information from the processor to help the grower to make a reasonably informed decision about the meat poultry growing agreement; and

(b) give a grower current information from the processor that is material to the running of the Grower's business.

Note; this is particularly important for growers' financiers, and for decisions in relation to capital expenditure

Content and form of disclosure document

(3) Information in a disclosure document must:

(a) comply with the following:

(i) be set out in the form and order of Annexure 1;

(ii) use the headings and numbering of Annexure 1;

(iii) if applicable—include additional information under the heading "Updates"; or

(b) if particular items are not applicable—include an attachment that sets out the headings and numbering of Annexure 1 for those items.

(4) The disclosure document must be signed by the Processor, or a director, officer or authorised agent of the processor.

Maintaining a disclosure document

(5) The processor must update the disclosure document within 4 months after the end of each financial year.

Civil penalty: 600 penalty units.

(6) However, the processor need not update the disclosure document after the end of a financial year if:

(a) the processor did not enter into a meat poultry growing agreement during the year; and

(b) the processor does not intend, or its directors do not intend, to enter into another meat poultry growing agreement in the following financial year.

(7) Despite subclause (7), if a request is made by a grower or potential grower, the processor must update the disclosure document so that it reflects the position as at the end of the financial year before the financial year in which the request is made.

Civil penalty 600 penalty units.

14 Processor to give documents to a grower or prospective grower

Not less than fourteen (14) days before signing a Meat Poultry Growing Agreement or any renewal or extension of a Meat Poultry Growing Agreement the grower must have been given:

(a) a copy of the Meat Poultry Growing Agreement; and

(b) a copy of the disclosure document prepared and updated in accordance with Appendix 1.

Subdivision C —Processors must publish standard forms of meat poultry growing agreements

15 Requirement to publish standard forms of agreements each 1 June

Publication deadline

(1) This section applies in relation to a corporation that, at 2 pm (by legal time in the Australian Capital Territory) on 1 June in a financial year (the *publication deadline*):

(a) is a processor; and

(b) intends to purchase meat poultry growing services during the next financial year.

Requirement to publish standard forms of agreements

(2) The processor must, at or before the publication deadline, publish on its website in accordance with subsections (3) to (5):

(a) one or more standard forms of meat poultry growing agreement, the terms and conditions of which specify:

(i) the region in which the growing services are to be provided;

(ii) the supply period of the meat poultry growing agreement;

(iii) the commencing growing fee and how it will be reviewed during the supply period;

(iv) the proposed batch rate, density level and mortality rate on which the commencing growing fee is calculated; and

(v) any adjustments or deductions which may apply in the calculation of payments to the grower of growing fees

(b) for each standard form the processor publishes under paragraph (a), a statement of the circumstances in which the processor would enter into a meat poultry growing agreement in that form with a grower.

Note The circumstances may, for example, relate to:

(a) the extent to which the grower's facility complies with the processor's facility requirements as set out in the processor's grower manual or which have otherwise been notified to the processor's contracted growers;

(b) the expected number of hatchlings to be placed onto the grower's farm in the period of the agreement &/or

(c) whether the processor has already entered into sufficient meat poultry growing agreements to meet the processor's demand for meat poultry.

Civil penalty: 600 penalty units.

(3) The processor must publish as many standard forms and statements under subsection (2) as are necessary to ensure that the published statements cover all the circumstances in which the processor intends to undertake and pay for contracted meat poultry growing in all regions in the financial year mentioned in paragraph (1)(b).

(4) Each standard form published under paragraph (2)(a) must be a standard form of a meat poultry growing agreement that:

(a) has a supply period starting during the financial year mentioned in paragraph (1)(b); and

(b) provides for a cooling-off period of 7 days; and

(5) The processor must not, after the publication deadline and before the end of the financial year mentioned in paragraph (1)(b), vary or remove from its website a standard form or statement published under subsection (2).

Civil penalty: 600 penalty units.

16 Published standard forms of agreements must comply with Code

A processor must not publish on the processor's website a standard form of a meat poultry growing agreement (whether or not as required by section 15) if, were the processor to enter into a meat poultry growing agreement in that form, the agreement would not comply with this Code.

Note: The standard form must specify all of the matters that this Code requires to be specified in, or provided for by, a meat poultry growing agreement, including a minimum price or minimum prices (see section 28).

Civil penalty: 600 penalty units.

17 Published standard forms of agreements must include statements of justifications for minimum prices

A processor contravenes this section if:

(a) the processor publishes a standard form of a meat poultry growing agreement on the processor's website (whether or not as required by section15); and

(b) the standard form does not include a statement of the processor's justification for the amount of the growing fees specified in the standard form including how it takes into account the necessity to provide the grower with a reasonable return over the supply period.

Civil penalty: 600 penalty units.

18 Published standard forms must be genuine

(1) A processor contravenes this section if the processor publishes on the processor's website a standard form of meat poultry growing agreement (whether or not as required by Section 15) and specifies a commencing growing fee which is capable of manipulation by the processor or is otherwise not the commencing growing fee which will be payable by a grower entering into a meat poultry growing agreement with the processor in that form.

(2) A processor contravenes this subsection if:

(a) the processor publishes on the processor's website (whether or not as required by section 15):

(i) a standard form of a meat poultry growing agreement; and

(ii) a statement that the processor would enter into a meat poultry growing agreement in that form in specified circumstances; and

(b) while the standard form remains on the website, a grower offers to enter into a meat poultry growing agreement with the processor in that form; and

(c) the specified circumstances exist; and

(d) the processor refuses to enter into a meat poultry growing agreement with the grower in that form.

Civil penalty: 600 penalty units.

(3) To avoid doubt, this Subdivision does not prevent a processor from entering into a meat poultry growing agreement that is not in a standard form published on the processor's website, if prior to the grower entering into the meat poultry growing agreement the processor has provided the grower with a statement of the reasons why the meat poultry growing agreement is not in a standard form published on the processor's website.

Subdivision D — Requirements for meat poultry growing agreements

19 Requirement to have meat poultry growing agreements

A processor must not place meat poultry hatchlings on a grower's property other than under a meat poultry growing agreement which is in writing.

Civil penalty: 600 penalty units.

20 Requirement for meat poultry growing agreements to comply with Code

(1) A processor must not enter into a meat poultry growing agreement that does not comply with this Code.

Civil penalty: 600 penalty units.

(2) A processor that is a party to a meat poultry growing agreement contravenes this subsection if:

(a) either:

(i) the processor unilaterally varies the agreement; or

(ii) all the parties to the agreement agree to vary the agreement; and

(b) following the variation, the agreement does not comply with this Code.

Civil penalty: 600 penalty units.

(3) A grower that is a party to a meat poultry growing agreement contravenes this subsection if:

(a) the grower unilaterally varies the agreement; and

(b) following the variation, the agreement does not comply with this Code.

Civil penalty: 100 penalty units.

21 Written records of unwritten agreements to enter into meat poultry growing agreements

Scope of this section

(1) This section applies if:

(a) a processor enters into an agreement with a grower or represents to a grower that the processor will enter into a meat poultry growing agreement with a grower when the grower has caused works to be carried out or other conditions are satisfied; and

(b) the agreement or representation is not in writing.

Requirement for processor to give grower written record of contents of agreement

(2) The processor must, not later than 30 days after the agreement or representation is made:

(a) make a written record of the agreement or representation in accordance with subsections (3) and (4); and

(b) give a copy of the record to the grower; and

(c) make all reasonable efforts to obtain from the grower a written acknowledgement that the record is a complete and accurate record of the contents of the agreement.

Civil penalty: 600 penalty units.

(3) Without limiting paragraph (2)(a), the record must:

(a) cover all of the matters dealt with by Subdivision D and

(b) in particular, record all of the matters that Subdivision D require to be specified in, or provided for by, a written meat poultry growing agreement.

Civil penalty: 600 penalty units.

(4) The record must:

(a) either:

(i) be in plain English; or

(ii) contain a plain English overview of the agreement; and

(b) consist of a single document.

22 Written records of unwritten variations of meat poultry growing agreements

Scope of this section

(1) This section applies if:

(a) a meat poultry growing agreement between a processor and a grower is varied or agreed to be varied; and

(b) the variation or agreement to vary the meat poultry growing agreement is not in writing.

Requirement for processor to give grower written record of variation

(2) The processor must, no later than 30 days after the variation occurs:

(a) make a written record of the variation in accordance with subsection (3); and

(b) give a copy of the record to the grower; and

(c) make all reasonable efforts to obtain from the grower a written acknowledgement that the record is a complete and accurate record of the variation.

Civil penalty: 600 penalty units.

(3) The record must:

(a) either:

(i) be in plain English; or

(ii) contain a plain English overview of the variation; and

(b) consist of a single document.

23 Written records of unwritten terminations of meat poultry growing agreements

Scope of this section

(1) This section applies if:

(a) a meat poultry growing agreement between a processor and a grower is terminated; and

(b) the termination is not in writing.

Requirement for processor to give grower written record of termination

(2) The processor must, no later than 30 days after the termination occurs:

(a) make a written record of the termination; and

(b) provide in the written record reasons for the decision to terminate

(c) give a copy of the record to the grower; and

(d) make all reasonable efforts to obtain from the grower a written acknowledgement that the record is a complete and accurate record of the termination.

Civil penalty: 600 penalty units.

Subdivision E — Contents of meat poultry growing agreements

24 Purpose of this Subdivision

For the purposes of Subdivision C, this Subdivision sets out requirements for a meat poultry growing agreement between a processor and a grower.

25 Written meat poultry growing agreements

A meat poultry growing agreement must be in writing and must be:

(a) either:

(i) be in plain English; or

(ii) contain a plain English overview of the agreement; and

(b) consist of a single document.

Note: For agreements that are not in writing, see section 22.

26 Cooling-off period

Meat poultry growing agreements must provide for cooling-off periods

(1) Subject to subsection (3), the meat poultry growing agreement must provide for a cooling-off period that ends 7 days after:

(a) if the agreement is in writing—the day the meat poultry growing agreement is entered into; or

(b) otherwise—the day the processor gives to the grower a written record of the contents of the agreement.

(2) A *cooling-off period* is a period:

(a) that starts on the day the meat poultry growing agreement is entered into; and

(b) during which the grower may terminate the agreement with immediate effect without incurring any liability to the processor.

Cooling-off periods not required for variations of meat poultry growing agreements

(3) To avoid doubt, this section does not require the meat poultry growing agreement to allow the grower to terminate the agreement in response to a variation of the agreement.

27 Supply periods

(1) The meat poultry growing agreement must specify the first and (last days of the period (the *supply period*) during which meat poultry growing services are to be supplied under the agreement. The agreement must identify the last day as a particular calendar date (for example, 30 June 2023).

(2) To avoid doubt, the supply period of the meat poultry growing agreement must have a definite end date.

(3) Subject to subsection (4) the meat poultry agreement must have a supply period which is not less than the longer of the following:

(a) a supply period which is sufficient for the grower to:

(i) amortise over the supply period the cost of any capital works which a grower is required by the processor to carry out before or during the supply period; and

(ii) obtain a reasonable return on the cost of any such works.

(b) a supply period of at least ten (10) years.

(4) the meat poultry growing agreement may have a supply period:

(a) which is less than the supply period required under subsection (3); and

(b) which has been requested in writing by the grower prior to entering into the meat poultry growing agreement.

(5) the grower must not be subjected to duress with respect to making a request under subsection (4).

Note: the 10 year period assumes that growers make ongoing improvements to their farms (see Section 54) and allows for that expenditure to be amortised over the period.

28 Growing Fees

(1) The meat poultry growing agreement must clearly specify:

(a) the commencing growing fee payable by the processor to the grower;

(b) the estimated batch rate, placement numbers and mortality rate on which the calculation of the growing fee is based.

(2) Variations in batch rates, density levels and mortality rates

The meat poultry agreement must require adjustment of the amount of growing fee payments to the grower to reflect the percentage of any variations from the batch rate, placement numbers or mortality rate specified in subsection (1).

(3) Review of growing fees

The meat poultry growing agreement must clearly specify:

(a) when the growing fee will be periodically reviewed and at what intervals, which must be at least annually;

(b) how adjustments made on reviews of the growing fee will be calculated.

(c) how the growing fee will consider the grower's fixed costs, variable costs and return on capital investment.

(4) Deductions from payments of growing fee

The meat poultry growing agreement must:

(a) specify any circumstances in which the processor may reject poultry raised by the grower as unfit for processing;

(b) the circumstances and extent to which the processor may make deductions from payments to the grower of growing fees:

(i) for rejected poultry;

(ii) for poultry which do not comply with any accreditation standards in the agreement;

(iii) lost poultry

(iv) for any other reason (other than under a payment adjustment scheme).

(5) Notification of rejections

(a) The meat poultry growing agreement requires the processor to give to the grower within 3 business days after the processor rejects poultry, written notice of the rejection including:

(i) the reason/s for the rejection; and

(ii) The results of the tests or parameters on which the rejection is based, and

(b) the consequences for the grower of the rejection.

(6) No consequential loss deductions

The meat poultry growing agreement must confine deductions from payments of growing fees to verifiable amounts or verifiable direct losses incurred by the processor and must not include loss of profits or other indirect or consequential loss.

(7) Operation of payment adjustments schemes

(a) Where a meat poultry growing agreement includes a payment adjustments scheme the meat poultry growing agreement must include the following:

(i) a clear explanation of the structure of the payment adjustment scheme and how it is intended to operate.

(ii) if the payment adjustment scheme involves measuring and comparing the growing performances of batches raised by growers under meat poultry growing agreements, a requirement that all batches included in the comparison have been raised under similar conditions as to:

(aa) density levels, accreditation requirements and times when birds are collected during the batch; and

(bb) processor inputs including quality of birds placed and feed.

(iii) the criteria on which the grower's growing performance is evaluated and measured must be specified and verifiable.

(iv) the calculations determining the amount of grower's payments together with all supporting information and data must be available to growers included in the calculation or to their appointed representatives.

(v) the circumstances in which a grower may be removed from a payment calculation under the scheme and instead paid the standard growing fee for a batch (being the growing fee referred to in sub-section (1) as reviewed under sub-section (3).

(vi) a provision that the scheme will be suspended or discontinued if a majority of the growers in the region to whom the payment adjustment system applies agree that it should be.

29 Fees for processor-provided services

(1) The meat poultry growing agreement must:

(a) specify the services (if any) the processor may or must perform for the grower; and

(b) state whether any fees are payable by the grower in relation to the services; and

(c) if fees are payable to the processor for certain services, clearly specify the amounts of the fees for the first 12 months (the *first year*) of the period of the agreement (or for the whole of the supply period, if the period is less than 12 months) and payment terms, in accordance with subsection (3).

(2) If fees are payable and the contract period is longer than 12 months, the meat poultry growing agreement must:

(a) specify how any processor services fees for periods occurring after the first year will be set; and

(b) for each consecutive period of 12 months after the first year (including any extension of the supply period if allowed by the agreement), and any final period if the contract period does not consist of a whole number of 12-month periods:

(i) require the processor to give to the grower a written notice clearly specifying the fees for that period, in accordance with subsection (3); and

(ii) specify the time by which the notice must be given.

(3) For the purposes of paragraph (1)(c) or (2)(b), the fees paid to the processor for a service provided to a grower for a period must be specified by specifying either:

(a) a single fee for the service that applies throughout the period; or

(b) a schedule of monthly fees for that period.

30 Responsibility for Costs

The meat poultry growing agreement must specify which parts of the costs of the growing process, including all fixed and variable costs and return on capital investment are borne by the processor and which are borne by the grower under the agreement.

31 Indemnities

The poultry meant growing agreement must provide that:

a) The processor indemnifies the grower against all loss, damage, fines, liability or claims for any death, injury, animal welfare issues, bird deaths, loss of feed or property damage caused or contributed to by the processor, it's employees or contractors, whether negligent or not.

32 Terminating or suspending meat poultry growing agreements unilaterally

(1) Unilateral terminations by growers

(a) The meat poultry growing agreement must specify the circumstances (if any) in which the grower may unilaterally terminate the agreement.

(b) A circumstance specified under subsection (1) must be one of the following:

(i) The processor is in material breach of the meat poultry growing agreement

(ii) The grower intends that the property listed in the meat poultry growing agreement will cease to used for growing poultry and the grower has not requested the processor's consent to an assignment of the meat poultry growing agreement.

(iii) the grower is entitled to terminate the agreement under *force majeure* provisions in the meat poultry growing agreement.

(c) The meat poultry growing agreement must:

(i) require a written notice of unilateral termination to be given to the processor which must include the reasons for termination and the date the termination takes effect; and

(ii) in the case of termination under sub-section (1)(b)(ii) specify a period of notice of not less than six (6) months.

(2) Unilateral terminations by processors

(a) The meat poultry growing agreement must specify the circumstances (if any) in which the processor may unilaterally terminate the agreement.

(b) A circumstance specified under subsection (2) must be one of the following:

(i) the grower is in material breach of the meat poultry growing agreement;

(ii) the processor intends to cease processing poultry at the primary processing plant currently serving that grower, and no other option is available, including transfer to another processor or another processing plant.

(c) The processor is entitled to terminate the agreement under *force majeure* provisions in the agreement.

(d) The meat poultry growing agreement must:

(i) require a written notice of unilateral termination to be given to the grower, which must include the reasons for termination and the date that termination takes effect; and

(ii) in the case of termination under subsection (2(b)(ii) specify a period of notice of not less than 12 months.

(e) A processor must not unilaterally terminate this agreement under subsection (2)(b)(ii) unless the processor pays to the grower the present value of the amount reasonably estimated to be the amount of growing fees which would have been payable to the grower for the balance of the term of the contract if the contract had continued; less an amount which based on historical data is reasonably estimated to be the batch costs which the grower would have incurred in growing poultry for the processor for the balance of the supply period.

33 Force Majeure Provisions

(1) The meat poultry growing agreement may contain force *majeure provisions* allowing either the processor or the grower to suspend or terminate the agreement if for reasons beyond the control of the party, the party is prevented from performing its obligations under the agreement.

(2) *Force majeure* provisions in the meat poultry growing agreement must only allow either the processor or the grower to terminate the agreement if the *force majeure* event has continued for a period of not less than six months, or by mutual agreement in writing in a shorter period.

(3) The reasons under subsection (1) which will enable either the processor or the grower to suspend or terminate the meat poultry growing agreement must not include impact on profitability or other commercial reasons.

(4) For the sake of clarity, commercial market forces as the result of competition from another processor or imported product is not a *force majeure* event. If a Processor wishes to reduce production in the face of market competition, s28(2) applies.

Subdivision F—Other matters relating to meat poultry growing agreements

34 Transfer of Farm Ownership

If a grower wishes to sell the farm to which a meat poultry growing agreement relates then:

(a) the processor shall not refuse consent to assignment of the meat poultry growing agreement to the purchaser of the farm unless on reasonable grounds the processor does not consider that the purchaser has the resources or capacity to carry out the grower's obligations under the meat poultry growing agreement; and

(b) the processor must not provide consent to assignment of the meat poultry growing agreement subject to additional capital works being required on the farm and its facilities, unless this is agreed in writing by the processor and the purchaser of the farm, in which event section 54 will apply.

35 Other terms

A meat poultry growing agreement may include terms in addition to those required by this Code if the terms are:

(a) lawful; and

(b) not inconsistent with this Code.

Example: A term of a meat poultry growing agreement is inconsistent with this Code if including the term contravenes the obligation to deal in good faith under section 11.

36 Emerging trading and marketing arrangements

To avoid doubt, the use of a particular type of trading or marketing arrangement or production model does not contravene this Code merely because that type of arrangement is new, emerging or not widely used in the meat poultry industry.

37 Penalties relating to unilateral variations, terminations and suspensions

Written variations, terminations or suspensions

(1) A processor that is a party to a meat poultry growing agreement must not vary, terminate or suspend the agreement other than as provided for by the agreement.

Civil penalty: 600 penalty units.

(2) A grower that is party to a meat poultry growing agreement must not vary, terminate or suspend the agreement other than as provided for by the agreement.

Civil penalty: 100 penalty units.

38 Application of termination of agreement

To avoid doubt, if a meat poultry growing agreement is terminated (including during a cooling-off period), the agreement continues to apply to growing services supplied under the agreement before the termination takes effect.

39 Payments at termination

If a meat growing agreement is terminated (including during a cooling off period), all payments to be paid by the processor to the grower continue to apply to growing services supplied under the agreement before the termination takes effect.

Subdivision G—Disputes Resolution

40 Meat poultry growing agreement must provide for a dispute resolution procedure including mediation and arbitration.

Internal procedure

(1) A meat poultry growing agreement must provide for a dispute resolution procedure in accordance with this Subdivision G for dealing with and resolving complaints by a party to the agreement, or a dispute between parties to the agreement (both referred to as “a dispute”) about matters under or in connection with the agreement or the Code.

Note: An example of a matter arising in connection with a meat poultry growing agreement is the termination of the agreement.

Internal disputes handling officer

(2) A processor who is a party to a meat poultry growing agreement must have a disputes officer to manage disputes in accordance with the dispute resolution procedure in the agreement.

Mediation

(3) A meat poultry growing agreement must provide for mediation in accordance with this Subdivision as a means for resolving disputes between parties to the agreement.

Arbitration

(4) A meat poultry growing agreement must provide for arbitration in accordance with this Subdivision as a means for resolving disputes between parties to the agreement.

41 Mediation adviser and mediators

(1) The Agriculture Minister must appoint a mediation adviser for the purposes of this Subdivision.

(2) The mediation adviser must compile a list of persons who are to be mediators for the purposes of this Subdivision.

42 Arbitration adviser and arbitrators

(1) The Agriculture Minister must appoint an arbitration adviser for the purposes of this Subdivision.

(2) The arbitration adviser must compile a list of persons who are to be arbitrators for the purposes of this Subdivision.

43 Resolving disputes—general

(1) If a party to a meat poultry growing agreement (disputing party) considers that there is a dispute in relation to a matter arising under or in connection with the agreement or the Code, the matter must be dealt with or resolved in accordance with the dispute resolution procedure in the agreement, if the party wishes it to be dealt with in this manner.

(2) If the matter is the termination of a meat poultry growing agreement, this Subdivision applies as if a reference to a party to a meat poultry growing agreement included a reference to a person who was a party to the agreement before it was terminated.

44 Dealing with disputes in accordance with internal disputes handling procedure

(1) The procedure in this section applies if a disputing party wishes to have the dispute dealt with in accordance with the dispute resolution process provided in the agreement.

(2) In the event that the dispute affects more than one grower in a similar manner the disputing party may be representatives appointed by the affected growers

in accordance with section 12 who will represent the interest of all of the affected growers as a single dispute.

(3) The disputing party must notify the other party to the agreement (the *respondent*), in writing, of the following:

(a) the nature of the dispute;

(b) that the disputing party wishes the dispute to be dealt with in accordance with the dispute resolution procedure provided in the meat poultry growing agreement;

(c) the outcome the disputing party wants.

(4) Within 5 working days after receiving notice of the dispute under subsection (2), the respondent must give a written acknowledgement to the disputing party stating:

(a) that notice of the dispute has been received; and

(b) the steps to be taken to deal with the dispute.

(4) The disputing party and the respondent must attempt to resolve the dispute in good faith in accordance with the dispute resolution procedure provided in the meat poultry growing agreement before taking action to resolve the dispute by mediation or arbitration.

(5) If the dispute is not resolved in accordance with the dispute resolution procedure provided in the meat poultry growing agreement within 7 calendar days after the acknowledgement was given to the disputing party under subsection (5) either party may take action to have the dispute resolved by mediation.

(6) The disputing party may, at any time, withdraw the dispute by notice in writing to the respondent.

45 Mediation

(1) The procedure set out in this section applies if a party to a meat poultry growing agreement wishes to have a dispute resolved by mediation in accordance with this Subdivision.

Appointment of mediator

(2) The party must request the mediation adviser to appoint a mediator for the dispute.

(3) The mediation adviser:

(a) must appoint a mediator within 14 days after receiving the request under subsection (2) unless the mediation adviser is satisfied that the complaint giving rise to the dispute:

(i) is frivolous or vexatious; or

(ii) has previously been the subject of another mediation; and

(b) must give the parties to the dispute, in writing, details of the mediator appointed.

Conduct of mediation

(4) Subject to subsection (5), the mediator must decide:

(a) how the mediation is to be conducted (for example, by telephone or in meetings); and

(b) the time and place for the mediation; and

(c) the day the mediation commences for the purposes of this Subdivision.

(5) The mediation must be conducted in Australia.

Mediator must notify mediation adviser that mediation has commenced

(6) Within 14 days after the mediation has commenced, the mediator must notify the mediation adviser, in writing, that the mediation has commenced and of the nature of the dispute.

Attendance at mediation

(7) Each party to the dispute must attend the mediation and attempt to resolve the dispute.

(8) For the purposes of subsection (7), a party is taken to attend a mediation to attempt to resolve a dispute if the party is represented at the mediation by a person who has authority to enter into an agreement to settle the dispute on behalf of the party.

Mediator must give notice of successful mediation

(9) If an agreement is reached in relation to the dispute, the mediator must, within 14 days after the agreement is reached:

(a) set out, in writing, the terms of the agreement; and

(b) give a copy of the terms to each party to the dispute and

(c) notify the mediation adviser that an agreement has been reached.

(10) The party who requested the mediation may, at any time, withdraw the complaint that is the subject of the dispute by notice in writing to the other party to the dispute and the mediator.

46 Termination of mediation

(1) The mediator conducting a mediation of a dispute in accordance with this Subdivision:

(a) may terminate the mediation at any time if the mediator is satisfied that a resolution of the dispute is not likely to occur; and

(b) must terminate the mediation if the party who requested the mediation requests the mediator to do so.

(2) If a dispute that is the subject of mediation in accordance with this Subdivision is not resolved within 14 calendar days after the mediation commences:

(a) either party to the mediation may ask the mediator to terminate the mediation; and

(b) the mediator must do so.

(3) If the mediator terminates a mediation under subsection (1) or (2), the mediator must issue a certificate stating:

(a) the names of the parties to the mediation; and

(b) the nature of the dispute that was the subject of the mediation; and

(c) that the mediation has been terminated; and

(d) that the dispute has not been resolved.

(4) The mediator must give a copy of the certificate to:

(a) the mediation adviser; and

(b) each party to the dispute.

(5) If the mediation is terminated and the dispute has not been resolved either party may request the arbitration adviser to appoint an arbitrator for the dispute.

47 Costs of mediation

(1) Each party to a dispute that was the subject of a mediation in accordance with this Subdivision must pay half the costs (if any) of the mediation (being all reasonable costs associated with the conduct of the mediation), unless the parties to the mediation agree otherwise.

(2) Each party to a dispute that was the subject of a mediation in accordance with this Subdivision must pay that party's costs of attending the mediation, unless the parties agree otherwise.

48 Arbitration

The procedure set out in this section applies if in accordance with section 46(5) a party to a meat poultry growing agreement has requested the arbitration adviser to appoint an arbitrator for the dispute.

Appointment of arbitrator

(2) Either party can request the arbitration adviser to appoint an arbitrator for the dispute.

(3) The arbitration adviser:

(a) must appoint an arbitrator within 7 calendar days after receiving the request under subsection (2) unless the arbitration adviser is satisfied that the complaint giving rise to the dispute:

(i) is frivolous or vexatious; or

(ii) has previously been the subject of another arbitration; and

(b) must give the parties to the dispute, in writing, details of the arbitrator appointed.

Conduct of arbitration

(4) Subject to subsection (5), the arbitrator must decide:

(a) how the arbitration is to be conducted (for example, by telephone or in meetings); and

(b) the time and place for the arbitration; and

(c) the day the arbitration commences for the purposes of this Subdivision; and

(d) the arbitrator must endeavour to minimise formalities and so far as possible make the arbitration a low cost process which will be readily accessible by the grower.

(5) The arbitration must be conducted in Australia.

Arbitrator must notify arbitration adviser that arbitration has commenced

(6) Within 14 days after the arbitration has commenced, the arbitrator must notify the arbitration adviser, in writing, that the arbitration has commenced and of the nature of the dispute.

Note: The arbitrator decides under paragraph (4)(c) when an arbitration commences.

Attendance at arbitration

(7) Each party to the dispute must attend the arbitration.

(8) For the purposes of subsection (7), a party is taken to attend an arbitration if the party is represented at the arbitration by a person who has the authority to enter into an agreement to settle the dispute on behalf of the party.

Arbitrator must give notice of conclusion of arbitration

(9) When the arbitration is concluded the arbitrator must within 14 days after it is concluded:

(a) set out, in writing, the terms of his award; and

(b) give a copy of the terms to each party to the dispute; and

(c) notify the arbitration adviser that the arbitration has been concluded.

(10) The decision of the arbitrator will be final and binding upon the parties.

49 Termination of arbitration

(1) The arbitrator conducting an arbitration of a dispute in accordance with this Subdivision must terminate the arbitration if the complainant mentioned in section 47 requests the arbitrator to do so.

(2) If the arbitrator terminates an arbitration under subsection (1), the arbitrator must issue a certificate stating:

(a) the names of the parties to the arbitration; and

(b) the nature of the dispute that was the subject of the arbitration; and

(c) that the arbitration has been terminated; and

(d) that the dispute has not been resolved.

(3) The arbitrator must give a copy of the certificate to:

(a) the arbitration adviser; and

(b) each party to the dispute.

50 Costs of arbitration

(1) Each party to a dispute that was the subject of an arbitration in accordance with this Subdivision must pay half the costs (if any) of the arbitration (being all reasonable costs associated with the conduct of the arbitration), unless the parties to the arbitration agree otherwise or the arbitrator makes an award of costs.

(2) Each party to a dispute that was the subject of an arbitration in accordance with this Subdivision must pay that party's costs of attending the arbitration, unless the parties agree otherwise or the arbitrator makes an award of costs.

51 Confidentiality requirements

The parties to a dispute about a matter arising under or in connection with a meat poultry growing agreement must observe any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving the dispute.

Subdivision H—Records and reporting

52 Record-keeping requirements

(1) A processor that is a party to a meat poultry growing agreement with a grower must keep the originals, or copies, of the following records for the period mentioned in subsection (3):

(a) if the agreement is in writing—the agreement;

(b) if the agreement is not in writing:

(i) the record of the contents of the agreement made

(ii) the acknowledgement (if any) obtained from the grower

(c) if the agreement is varied in writing—the variation;

(d) if the agreement is varied other than in writing:

(i) the record of the variation and

(ii) the acknowledgement (if any) obtained from the grower

(e) if the agreement is terminated in writing—the termination;

(f) if the agreement is terminated other than in writing:

(i) the record of the termination and

(ii) the acknowledgement (if any) obtained from the grower

(g) any notice given to the grower under the agreement

(h) any statement given to the grower under the agreement

(i) any notice given to the grower under the agreement

(j) any notice of fees given to the grower under the agreement

(k) any extension notice given by the grower under the agreement

Civil penalty: 600 penalty units.

(2) A grower who is a party to a meat poultry growing agreement must keep the originals, or copies, of the following records for the period mentioned in subsection (3):

(a) if the agreement is in writing—the agreement;

(b) if the agreement is not in writing—the record of the contents of the agreement

(c) if the agreement is varied in writing—the variation;

(d) if the agreement is varied other than in writing—the record of the variation

(e) if the agreement is terminated in writing—the termination;

(f) if the agreement is terminated other than in writing—the record of the termination

Civil penalty: 100 penalty units.

(3) A record, or a copy of a record, must be kept for the period:

(a) starting on the day on which the record is made or given; and

(b) ending on the last day of the 6 years beginning on the day the meat poultry growing agreement ends.

53 Report on disputes

(1) For the purposes of this section:

(a) the first reporting period is the period beginning on the date of Assent, and ending on the same date in the following year; and

(b) a later reporting period is each period of 12 months following the first reporting period.

(2) A processor who is a party to a meat poultry growing agreement must prepare a report for the first reporting period, and each later reporting period, stating the following:

(a) the number of disputes arising under or in connection with the agreement that were the subject of a mediation that commenced or ended in the reporting period;

(b) information about the nature of the disputes referred to in paragraph (a);

(c) the number of mediations conducted in the reporting period to resolve the disputes referred to in paragraph (a) and the average time taken to resolve the disputes;

(d) information about the outcome of the disputes referred to in paragraph (a);

(e) the number of disputes arising under or in connection with the agreement that were the subject of an arbitration that commenced or ended in the reporting period;

(f) information about the nature of the disputes referred to in paragraph (e);

(g) the number of arbitrations conducted in the report© period to resolve the disputes referred to in paragraph (e) and the average time taken to resolve the disputes;

(h) information about the outcome of the disputes referred to in paragraph (e).

(3) The report must not:

(a) name, or otherwise specifically identify, a grower or any other person (other than the processor) who was involved in the disputes covered by the report; or

(b) include any other information that would be in contravention.

(4) The processor must publish the report on the processor's website before 2 pm (by legal time in the Australian Capital Territory) on 1 June immediately after the end of the relevant reporting period.

Civil penalty: 600 penalty units.

(5) If the processor is required to publish a report under subsection (4) before 2 pm on a day in a financial year, the processor must not, after that 2 pm and before the end of the next financial year, vary the report or remove it from the processor's website.

Civil penalty: 600 penalty units.

Subdivision I—Miscellaneous

54 Significant capital expenditure not to be required without recompense

(1) A processor must not require a grower to undertake significant capital expenditure in relation to a the grower's business during the term of the meat

poultry growing agreement without compensation to the grower either by cash payment to the grower or by an amount added to the growing fees which is calculated to reimburse the amount over the balance of the supply period.

Civil penalty: 600 penalty units.

(2) A processor must not require a grower to undertake significant capital expenditure in relation to a grower's business at the time of renewal of the meat poultry growing agreement without compensation to the grower either by cash payment to the grower or by an amount added to the growing fees which is calculated to reimburse the amount over the supply period.
Civil penalty: 600 penalty units.

(3) For the purposes of subclause (1), *significant capital expenditure* excludes the following:

(a) expenditure that is disclosed to the grower in the disclosure document that is given to the grower before entering into a meat poultry growing agreement for the first time

(b) if expenditure is to be incurred by all or a majority of growers and the expenditure is approved by a majority of those growers;

(c) expenditure incurred by the grower to comply with legislative obligations;

55 Information and discussion about capital expenditure

(1) This clause applies if a disclosure document for a meat poultry growing agreement discloses expenditure of the kind mentioned in section 54.

(2) The processor must include in the disclosure documdent as much information as practicable about the expenditure, including the following:

(a) the rationale for the expenditure, including scientific proof of need as appropriate;

(b) the amount, timing and nature of the expenditure;

(c) the anticipated outcomes and benefits of the expenditure for each of the parties;

(d) the expected risks associated with the expenditure.

Example: The information could include the type of any upgrades to facilities or premises,

(3) Before entering into, renewing or extending the term or scope of the agreement, the processor and the grower or prospective grower must discuss the expenditure.

(4) The discussion must include a discussion of the circumstances under which the grower or prospective grower considers that the grower or prospective grower is likely to recoup the expenditure, having regard to the geographical area of operations of the grower or prospective grower.

56 Association of growers or prospective growers

A processor must not engage in conduct that would restrict, impair or punish:

(a) a grower or prospective grower's freedom to form an association; or

(b) a grower or prospective grower's ability to associate with other grower or prospective growers for a lawful purpose.

Civil penalty: 600 penalty units

Part 3—Application and transitional provisions

Division 1—Application of this instrument

57 Meat poultry growing agreements entered into before the date of Assent

(1) This section applies in relation to a meat poultry growing agreement entered into by a processor before the date of Assent of this Code (existing agreement).

(2) The *transition period*, in relation to the existing agreement, is the period:

(a) starting on the date of Assent; and

(b) ending on the earlier of:

(i) the day the existing agreement is first varied on or after the date of Assent; and

(ii) 1 year after the date of Assent, meaning 365 days.

(3) Subparagraph (2)(b)(i) does not apply to a variation of the existing agreement if the only effect of the variation is to increase the growing fees under the existing agreement.

Application of Code during transition period

(4) Subdivision A of Division 2 of Part 2 (obligation to act in good faith) applies in relation to anything done under the existing agreement during the transition period.

(5) All other Subdivisions of Part 2 do not apply in relation to the existing agreement during the transition period.

Agreement must comply with Code after end of transition period

(6) Subsection (7) applies if the existing agreement is in force immediately after the end of the transition period.

(7) Unless not less than six (6) months before the end of the transition period:

(a) the processor has made a written offer to the grower to:
(i) vary the existing agreement so that it complies with the Code; or

(ii) enter into a new meat poultry growing agreement with the grower which complies with the Code but otherwise contains the same terms and conditions as the existing agreement, or terms and

conditions which are no less advantageous to the grower than the terms and conditions of the existing agreement; and

(b) the existing agreement has not been varied or replaced in accordance with this subsection because the grower has in writing declined the offer made by the processor or failed to accept it before the end of the transition period.

Subdivisions C to G of Division 2 of Part 2 apply in relation to the existing agreement and the processor contravenes this subsection if immediately after the end of the transition period the meat poultry growing agreement does not comply with the Code.

Civil penalty: 600 penalty units.

(9) To avoid doubt, this section does not affect the application of this instrument in relation to a meat poultry growing agreement entered into on or after the date of Assent.

Annexure 1 - Disclosure document for growers or prospective growers

Required information to be provided in the disclosure document:

1) Processor name, business address and phone number

2) Processor ABN, ACN or ARBN (or foreign equivalent if the processor is a foreign processor)

3) The signature of the processor, or of a director, officer or authorised agent of the processor;

4) The preparation date of the disclosure document

5) The following statement:
You should make your own enquiries about the processor and about the business of the processor. You should get independent legal, accounting and business advice before signing the meat poultry growing agreement

Litigation and disputes

6) Details of:

(a) current proceedings by a public agency, criminal or civil proceedings relevant to the processor, against the processor, a processor director or against companies owned or majority owned by the processor in Australia alleging:

(i) breach of a meat poultry growing agreement; or

(ii) contravention of trade practices law; or

(iii) contravention of the Corporations Act 2001; or

(iv) unconscionable conduct; or

(v) misconduct under this Code; or

(vi) an offence of dishonesty; and

(b) proceedings against a contractor, company associated with the Processor or against companies owned or majority owned by the processor other than for unfair dismissal of an employee, under:

(i) section 12 of the Independent Contractors Act 2006; or

(ii) a law of a State or Territory that regulates workplace relations of independent contractors.

7) Whether the Processor, a processor director, or office holders of companies owned or majority owned by the processor in Australia has been

(a) in the last 10 years—convicted of a serious offence, or an equivalent offence outside Australia; or

(b) in the last 5 years—subject to final judgement in civil proceedings for a matter identified in this Code; or

(c) in the last 10 years—bankrupt, insolvent under administration or a Chapter 5 body corporate in Australia or elsewhere.

8) For items 6 &7—the following details (where relevant):

(a) the names of the parties to the proceedings;

(b) the name of the court,or tribunal;

(c) the case number;

(d) the general nature of the proceedings;

(e) the current status of the proceedings;

(f) the date and content of any undertaking or order under section 87B of the Competition and Consumer Act 2010;

(g) the penalty or damages assessed or imposed, if any;

(h) the names of the persons or majority owned corporations who are bankrupt, insolvent under administration or externally administered;

(i) the period of the bankruptcy, insolvency under administration or external administration.

9) Mediation and Arbitration

The number of meat poultry growers having meat poultry growing agreements with the processor who are party to a mediation or arbitration process with the processor conducted during the previous three financial years, whether the process has been completed or remains current.

10) Existing growers

Number, sorted by State, Territory and region, of:

(a) existing numbers of farms

(b) existing numbers of sheds

11) Required capital expenditure

The information required by section 55 of the Code with respect to any capital expenditure:

(a) which the processor requires the grower to make either before or after the commencement of the meat poultry growing agreement; or

(b) is likely to require during the supply period of the meat poultry growing agreement.

12) Supply of goods or services to a grower

For the processor's requirements for supply of goods or services to a grower — details of:

(a) any goods or services for which the grower must make payment; and

(b) restrictions to acquisition of goods or services by the grower from other sources; and

(c) the obligation of the grower to accept goods or services from the processor or an associate of the processor; and

(d) the processor's obligation to supply goods or services to the grower in suitable condition and fit for purpose; and

(e) conditions under which the grower can reject or return goods, and to whom; and

(f) whether the processor may change the range of goods and services supplied, and to what extent; and

Note: Before a requirement is made under paragraph (b) or (c), the processor may notify, or seek authorisation from, the Australian Competition and Consumer Commission (see Part VII of the Act).

The processor is not required to disclose the details referred to above in relation to a supplier if the grower is permitted to acquire goods or services from sources other than the Processor without the Processor's approval.

13) Unilateral variation of meat poultry growing agreement

(1) The circumstances in which the processor has unilaterally varied a meat poultry growing agreement in the last 3 financial years (including, if applicable, financial years before this code came into force).

(2) The circumstances in which the meat poultry growing agreement may be varied, unilaterally, by the processor in the future.

14) Availability of standard Meat Poultry Growing Agreements and where they are published.

(1) A statement to the effect that standard meat poultry growing agreements are available and information as to where they are published or otherwise available.

(2) The number of meat poultry growing agreements entered into by the processor during the last three financial years which specified growing fees either higher or lower than those in the applicable published meat poultry growing agreement for the relevant year.

15) Assignment of meat poultry growing agreement

Details of any restrictions or conditions upon assignment of the meat poultry growing agreement to a purchaser from the of the relevant property.

16) Grower Earnings Information

Information indicative of likely earning capacity under the meat poultry growing agreement including:

a) the manner in which payments under the meat poultry growing agreement will be calculated and made e.g. per square metre of shedding area, per bird placed or per bird collected or otherwise;

b) the density level, batch rate and mortality rate upon which the growing fee is based, and whether any variations in these are likely with respect to batches placed under the meat poultry growing agreement;

c) for each of the last three financial years the following information on a per annum basis with respect to batches placed upon the relevant property:

(i) the density level;
(ii) the batch rate;
(iii) the mortality rate;
(iv) the amount of growing fees paid.

d) a statement to the effect that the grower does not have complete control of inputs, and that grower earnings may be directly affected by processor inputs and activity including health and fitness of day old birds, vaccination, feed quality, presence of disease or toxins in the breeding stock etc..

17) Updates

1) Any information given under clause 17 that has changed between the date of the disclosure document and the date the disclosure document is given under the code.

18) Receipt

1) On the last page of the disclosure document:

(a) a statement to the effect that the prospective or current grower may keep the disclosure document; and

(b) a form on which the prospective or current grower can acknowledge receipt and understanding of the disclosure document.

Appendix 5 – Overview of common and relevant provisions of key agricultural and other relevant industry Codes of Conduct

Code provision	Dairy Code	Horticulture Code	Food and Grocery Code	Sugar Code	The Code of Conduct for Australian Winegrape Purchases	Franchising Code
Mandatory	Mandatory s 7	Mandatory s 5	Voluntary (see s 4)	Mandatory s 4	Voluntary	Mandatory S4
Obligation to deal in good faith	s 11 *Comparatively more prescriptive than general obligation found in other industry codes*	s 8-9 Includes term that agreement must not limit or exclude obligation to deal in good faith.	s 6B general duty, additionally prescribes actions which may be taken into account i.e. acting honestly, evidence of retribution, duress in relationship.	s 5 including 'non-limiting' subclause that each party must not mislead, harass, intimidate or oppress any other party or proposed party.	No legal obligation (voluntary code) Preamble cites principle to deal in good faith	S6 Legal obligation, cannot be limited or excluded in other documents
Exception for processors that are small business entities	s 8 - provides certain provision exemptions for processors that are a small busines entity in the relevant financial year	-	-	-	-	
Relevant definitions	s 9 - defines farmer to mean 'a farmer that is a corporation'	ss 5, 7 defines 'grower' and 'horiculutre produce'	-	s 3 grower means a person who supplies, or proposes to supply, cane to a mill.	s 2 grower means a Person who produces Grapes for the purpose of sale to a Winemaker.	
Requirement to publish standard forms of supply/trade agreements	sub div B, s 12-15 include: requirement to publish standard form which complies with Code, that forms must include statements of justiciations for minimum prices, and must be genuine.	ss 10-11 – trader must prepare and make publicly available terms on which the trader is prepared to trade in horticulture produce with a grower. This document must specify a prescribed list of terms including, e.g.: if the trader is prepared to trade as an agent or merchant or both, quality and delivery requirements, when payment will be made, insurance, any extra fees,	-	-	-	s53(A) standard form of franchise agreement must be placed on the Register

Code provision	Dairy Code	Horticulture Code	Food and Grocery Code	Sugar Code	The Code of Conduct for Australian Winegrape Purchases	Franchising Code
		commissions costs etc (if trader), etc.				
Requirement for supply/trade agreements: • Requirement to have agreement • Written records of terms, variations and terminations	sub div C, s 16-20	Pt 3, ss 12-15 Additional term that a trader cannot act as both agent and a merchant under the one horticulture produce agreement (s 14).	s 7 – grocery supply agreements must be in writing and retained	s 7 – requirement for supply contracts, must be signed by each of the parties ss 8-9 may be individual or collective contract	s 3	Div 3: Assumes mandatory agreement between parties. Defines terms in Part 5 and other places.
Content of supply/trade agreements	sub div D, s 21-33	S 16-18 Includes additional matters to be specified by agents and merchants	s 8	S 10		Div 3.
Must be 'written' form	s 22	S 15(1)	s 7	-	s 3.1, with exceptions in s 3.2	
Cooling-off period	s 23 - supply agreements must provide for a cooling- off period that ends 14 days after the agreement is entered into; or otherwise provided to the farmer in written form.	S 20 – 14 day cooling-off period for horticulture produce agreements which are a term of 90 days or more, unless shorter period is agreed by parties. The initial cooling-off period must not be reduced by more than 7 days.	-	-	-	
Supply periods	s 24 must specify first and last days of agreement period of supply, including definite end date	S 16(g) –if agreement is only for limited term, the term must be specified	s 8(d) – if intended to operate for limited time, term must be specified	s 7(2) may be for one or more crushing seasons	S 3.5	
Quality and quantity	s 25	ss 16(c)-(d) circumstances and period within which trader must give grower reasons for rejection ss 16(h)-(k) – includes specifications used to determine quality, how	s 8(b),(e) – any circumstances in which the retailor or wholesaler may reject groceries, any quantity and quality requirements	-	S 3.5 Also see s 5 - grape quality assessment procedure and requirements for agreements	

Code provision	Dairy Code	Horticulture Code	Food and Grocery Code	Sugar Code	The Code of Conduct for Australian Winegrape Purchases	Franchising Code
		trader deals with produce that does not meet quality requirements, etc.	s 21 fresh produce standards and quality specifications			
Price transparency - minimum price or price determination	s 26 - must clearly specify single min price, or schedule or yearly or monthly min prices.	ss 17 – 18 – agents and merchants respectively, agreements must specify formula for price, any price contingency, when price will be determined s 32 – price to be paid by merchant for grower's produce is: agreed in writing or an amounted calculated by method specified in agreement.	- s 27A - price increase notification / negotiation requirements s 28 information about price increases	S 10(1)(a)-(e) – supply contract must provide a term for the amount, or basis of working out the amount, of the payment to grower for supply of the cane. Also, must include a related sugar pricing term, a grower economic interest (GEI) sugar price exposure term, a GEI sugar marketing term (if relevant).	s 3.5, 4 – agreements must set out price or pricing mechanism, including one of the following, fixed price, base price, grade price, or pricing formula.	
Min price - Retrospective step downs	s 27 - flat prohibition. s 39 - prescribes penalties for retrospective step downs.		s 10 – retailor or wholesaler must not vary a grocery supply agreement with retrospective effect.	-	S 5.3 – price deductions not to be imposed unless the grapes have failed to meet prescribed quality standards	
Min price - Unilateral prospective step down and limited circumstances	s 28 - provides limited circumstances where unilateral prospective step downs are permissible	See price determination requirements ss 17-18.	s 8(c) – period within which the retailor or wholesaler must pay supplier for groceries and circumstance sin which any payment may be withheld or delayed.	-	-	
Time for payment		s 26 – period to be prescribed re payment of proceeds of sale by agent s 35 – merchant to give grower payment for produce delivered under the agreement within payment period specified.	s 8(c) – period within which the retailor or wholesaler must pay supplier for groceries and circumstance sin which any payment may be withheld or delayed. s 12 – payments to suppliers must be made within time frame specified in agreement or 'reasonable time'	-	ss 3.5, 4.2 – prescribes payment terms which must be adopted as a minimum by signatories, such that: (i) one third by the end of the month following the month during which the Grapes were delivered; (ii) one third by the end of June; and (iii) the balance by the end of September	

Code provision	Dairy Code	Horticulture Code	Food and Grocery Code	Sugar Code	The Code of Conduct for Australian Winegrape Purchases	Franchising Code
Fees for services	s 29 – must specify services (if any) the processor may or must perform for the farmer and prescribe fees payable by the farmer for the services	Ss 17-18 – charging of commissions, fees and extra costs, merchant services to be defined and fees prescribed		-	Likely covered broadly by s 3.5	
Transfer of ownership	s 30 – must specify when processor becomes owner of the milk	S 30 – ownership of horticulture produce does not pass to agent s 34 – ownership transfer from grower to the merchant on delivery of produce to merchant (if formula to calculate price has been agreed before delivery		-	s 3.5	
Required reporting to grower/producer	s 25 – processor required to give producer information regarding quality and quantity of milk supplied	ss 29, 36 – requirements for agents and merchants to report to grower regarding quality, dates, price, and similar.		-	s 5.3(b)-(c) – requirements to notify grower of any decision to impose a price deduction or reject grapes	
Prohibition on certain behaviours by processor	s 31-32 prohibit exclusive supply and a maximum volume, and combining exclusive supply and tier pricing respectively.		s 10 – retrospective agreement variation prohibited ss 13-18 - restricts retailer or wholesaler behaviours which directly or indirectly make suppliers pay or cover costs in regard to shrinkage, wastage, payments as a condition of being a supplier (condition of stocking or listing grocery products), payments for business activities and better positioning of groceries and funding promotions.	-	s 4.1(b) – signatories must not purchase grapes on the basis of a pricing formula that gives the Winemaker the opportunity to substantially influence the price payable to the Grower.	
Unilateral variation • By farmers • By processors	s 32 - requires circumstances of any unilateral variation by farmers to be specified in agreement and prohibits	S 16(f) process for variation broadly.	s 9 – prohibition on unilateral variation by retailer or wholesaler without consent of supplier concerned.	-	Contained in preamble principles	

Code provision	Dairy Code	Horticulture Code	Food and Grocery Code	Sugar Code	The Code of Conduct for Australian Winegrape Purchases	Franchising Code
• Processes for unilateral variation	unilateral variation by processors. Penalties s 40.		Exceptions included in circumstances where variation is in accordance with agreement.			
Unilateral termination • By farmers • By processors Processes for unilateral termination	s 34 as above. Penalties s 40.	s 16(q) process for terminating agreement	s 8(f) circumstances in which agreement may be terminated (if the agreement provides for termination)	-	s 3.5(b) any termination mechanisms must be stated	
Loyalty payments	s 35 – if loyalty payments provided in agreement, must be done so in accordance with prescribed conditions. Penalties s 42	-		-	-	
Extensions	s 36 – only applies if agreement is longer than 3 years, enables farmer to give processor a written notice postponing the end of the supply period by 12 months.	-		-	-	
Complaints/ dispute resolution process	Sub div E	Pt 5	Pt 5	s 12, Pt 4	s 6	
Complaint handling process prescribed in agreements	s 43	-	-	-	s 6.1	
Mediation, resolving complaints, termination, costs, arbitration, termination of arbitration and costs of arbitration	ss 45-53	ss 40 - 46	ss 38 – 39 supplier may seek mediation or arbitration related to matters covered by the code	ss 13-19	ss 6.2-6.5 –negotiation and then conciliation process before formal dispute resolution is pursued by relevant party.	
Confidentiality requirements	s 54	-	Not in regard to disputes s 25 - but broad limitations in respect of the use of confidential information disclosed by suppliers to retailers or wholesalers	-	s 6.5(b)	
Independent assessor (quality dispute or	-	Pt 6, ss 47 – 52 horticulture produce	Pt 5, ss 31-36D - provides retailer's or wholesaler's requirement to appoint	-	See s 5 grape assessment procedure	

Code provision	Dairy Code	Horticulture Code	Food and Grocery Code	Sugar Code	The Code of Conduct for Australian Winegrape Purchases	Franchising Code
alternate dispute resolution mechanism)		assessors, appointment, role, report and costs	Code Arbiter, who receives, investigations and determines remedies in regard to complaints		and content of agreements s 6.3 - expert determination by either an Independent Technical Expert or Independent Pricing Expert.	
Record keeping requirements	s 55 – prescribed record-keeping requirements regarding supply agreement for both farmer and processor. Failure to comply results in civil penalty.	ss 53 – 56 – record-keeping requirements regarding produce agreements entered into, for traders and growers. Failure to comply results in civil penalty. Additional provision for grower or grower representative to request to inspect records of an agent that relate to the sale of grower's produce.	s 43 – general record-keeping obligations of retailers and wholesalers s 36C – Code Arbiter to keep records regarding complaints, investigations and related processes	-	-	
Report on disputes	s 56 – processors must report on disputes regarding supply agreements and publish on the processor's website.	-	s 36D - code Arbiter to prepare written report in respect of each financial year	-	s 7 – covered as part of annual reporting of Code	
Review of Code	S 6 – prescribed commencement dates of review (approx. every 2 years) and requirement to consult with stakeholders in diary industry.	-	ss 37 – 37F code to be independently reviewed (at least twice as prescribed in s 5 of Regs). Minister must appoint Independent Reviewer for this purpose.	Within 18 months of commencement of the code.	s 7 – Code performance will be reported annually on a regional basis, along with the number of Signatories, the number of Disputes notified to the Secretariat and/or resolved under the provisions of the Code and the number of Signatories who have breached the Code. Formal review every three years.	