



The Commissioner,  
Australian Competition and Consumer Commission  
27/135 King St, Sydney NSW 2000

Dear Madam,

**Re: Response to ACCC interim report Aug 2024 - Supermarkets Inquiry**

Below is a further response to the issues raised in the Interim Report for the Supermarkets Inquiry, particularly noting that ACCC has foreshadowed further investigations into the chicken meat supply chain.

ACGC provided a submission to the original Issues Paper outlining a number of key issues affecting meat poultry farmers. The comments in this submission should be read in conjunction with those in our previous submission.

Please note that the number formatting in this submission deliberately matches the section in the Interim Report to which they refer. Sections where we have no comment have been omitted in the numbering.

Our comments are as follows:

**2.2.1. Issues Paper and submissions received**

Meat poultry farmers have NO ability to supply supermarkets directly as they do not own the birds. Moreover, with meat poultry processors controlling more than 90% of commercial meat poultry genetics, farmers have NO ability to set up their own enterprises. In fact there is evidence that small processors, who are required to source their supply of eggs or breeding birds from companies for whom the “big 2” processors (ie Inghams and Baiada) have licence; are under pressure from the “big 2” processors at various times to comply with the wishes of the “big 2” on various issues.

Equally, as a result of this highly unusual farming arrangement, there is no price transparency within the supply chain at all, with the “big 2” processors effectively acting as gatekeepers in both directions in the supply chain. Farmers can access retail prices and supermarkets retail and wholesale prices; processors have visibility of farm gate, wholesale and retail pricing and in that respect are in a uniquely powerful position within the supply chain - a power position that they energetically and frequently use to their advantage.

Note that institution of a meat poultry Code of Conduct could “complete the circle” for the retail sector in this industry. By publishing contracts and prices at farm level, retailers could by analysis work out the processor’s share of supply chain profitability. While full supply chain pricing in a Code of Conduct environment would still be somewhat opaque for farmers, it would still be more transparent than the current situation. Not surprisingly, one of the supermarket chains has indicated - unsolicited - that it would support a mandatory Code of Conduct for the meat poultry industry.

Note that a Mandatory Code of Conduct would NOT, as it has done in the dairy industry, encourage processor-switching to hunt for higher farm gate returns, as growers can only change processor with

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permission from their current processor - and then only within the geographic boundaries that the processors have determined between themselves (based on access to processing plants, processors only widen their supply area in times of short supply).

### **2.2.2. ACCC Consumer survey**

ACGC strongly encouraged farmers to participate in the consumer survey. While we have no records of the number of farmers who did participate, this office received extensive feedback on the gap between retail prices and farm gate prices. Analysing the wide variety of highly profitable “secondary processed” meat poultry products, growers receive on average between 2.7% and 3% of retail cost. This is significant because growers own around **40%** of industry capital, and bear responsibility for significant and rising costs including insurance, labour, and depreciation.

With the cost of one single meat chicken “shed” now approaching \$2M, this rate of return is completely unsustainable.

### **2.2.3. Roundtables with farmers and growers of agricultural goods**

ACGC participated in a meeting with ACCC on 2 August 2024. At that meeting we were asked to provide names of accountants who were undertaking work on meat poultry farm accounts, due to the difficulty of getting farmers to “talk” voluntarily for the reasons below. Sadly, when these were provided we were then informed that ACCC could not talk to these people. ACCC then advised that they wanted to talk to farmer volunteers, which is not possible for the reasons below. Only mandatory information gathering has the potential to protect farmers.

It is worth noting that it is “standard practice” that any grower who “talks” - to media, to regulators, even to other processors on occasions, or who acts as a farmer’s representative, or sometimes even as a negotiator - has a high risk of having their contract terminated. This is significant because a farm is essentially worthless without a contract - and because the “sheds” are so highly specialised, conversion to other activities is both difficult and costly. There is almost never another processor to whom a farmer can take their business, for geographic and power reasons (eg control over breeding stock supply).

So many growers have been terminated over time, including to “make the point”, that growers will not step forward voluntarily. Data would have to be gathered compulsorily.

Equally, as a result of this enormous power imbalance, growers who try to negotiate for higher prices to cover rapidly rising costs have little countervailing power even with Class exemptions. Return on investment in this industry has fallen so far that many farms are operating at below cost of production, and more than 20% of Australian farms are listed for sale, with few to no buyers.

One top performing farmer recently ‘retired’ voluntarily on the basis of sustainability - he and his wife each earned \$26 000 for the previous 12 month period. This is only marginally higher than the JobSeeker allowance, for a total work input in excess of 80 hours per week (farmer and wife) – and works out at \$6.25 per hour!

### 2.2.4. Compulsory information gathering powers

See above.

### 3.1.1. The importance of groceries and the impact of the rising cost of living

It is worth noting that:

- Anecdotal, retail prices for chicken breast meat have risen by \$1 - \$2 per kg on average in the last 2 years and are now averaging [around \\$15/kg](#).
- A [point analysis on 22 June](#) comparing “prime cuts” of beef, lamb, chicken and fish noted that chicken meat is the least costly meat by a significant margin and more importantly was remarkably similar in price across a number of retail outlets including the supermarkets.

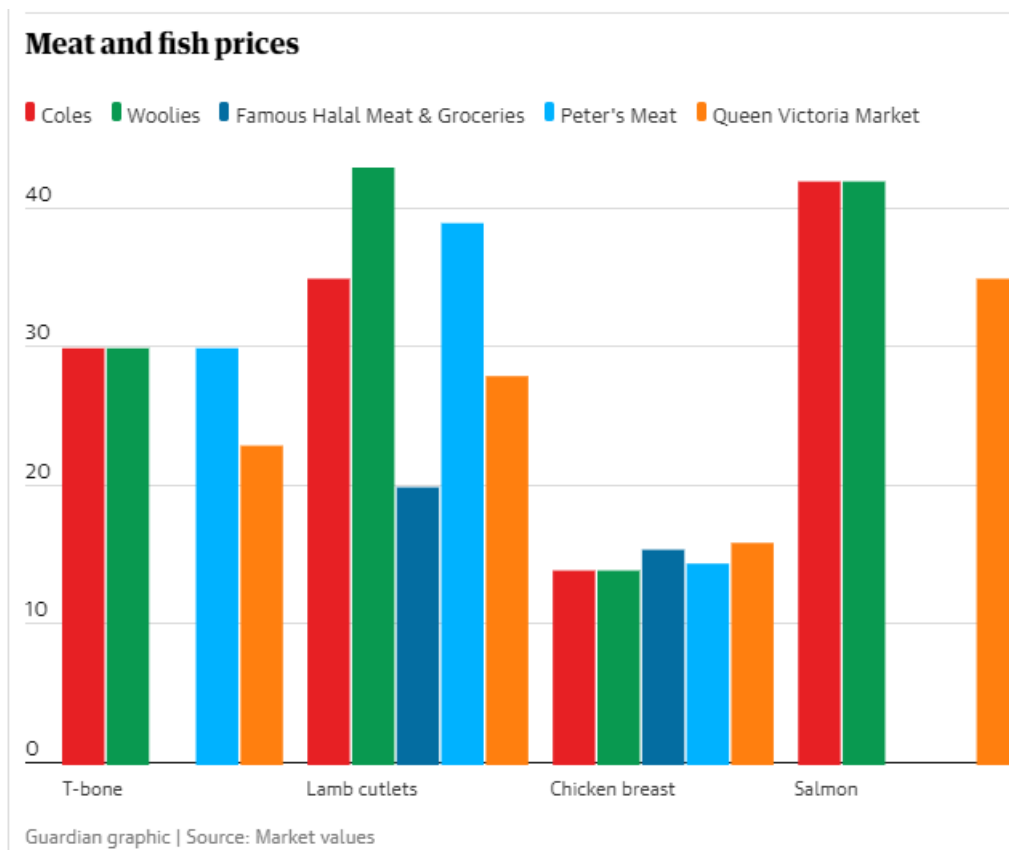


Figure 1: Costs of meat on 22 July 2024 Source: [The Guardian, 22 June 2024](#). Y axis = \$/kg

The chicken data is not a sign of a normal agricultural market! It suggests market manipulation at processor and /or supermarket level such that chicken appears to be being treated more as grocery goods and less as fresh food. The dramatic difference between the retail price of this agricultural protein vs other meats also highlights the extent to which the supply chain has been exploited by both supermarkets and processors to a point that many farmers are now operating at below the true cost of production (see below).

- In real terms the price of chicken meat has been falling for decades, in the face of rising cost of inputs. For example, between 1960 and 2010 the real price of chicken fell by 75% to [\\$10 for a whole fresh chicken](#)<sup>1</sup>. In other words, if the price of chicken had kept up with inflation in that 50 year period, the 2010 cost of a whole fresh chicken would have been \$40. (This therefore assumes that the cost of a whole chicken in 1960 was around \$13.33, converted from pounds).

Extending the example further, between 2010 and 2024, the retail cost of a whole fresh chicken has not moved from the 2010 figure and may have actually reduced. We have found the current cost of whole, cooked chicken at between [\\$10 and \\$12](#)<sup>2</sup> (Coles) and whole fresh chicken at between [\\$6.70](#)<sup>3</sup> and [\\$9.00](#)<sup>4</sup>. (Using the [RBA inflation calculator](#), even between 2010 and 2023 the cost of that same whole chicken should cost at least \$14).

Using the RBA inflation figures from 1960 to 2024 - that calculated \$13 per whole chicken for roasting in 1960 should be priced at towards \$200! Thankfully, ongoing industry development and efficiency means that this is not the real cost of chicken today.

However, this is NOT, as processors argue, simply the result of better genetics and better feed, although these items certainly play a role. Genetics and feed inputs underwent enormous gains in the first 50 years of the industry, but the rate of gain has moved towards a natural plateau, particularly in the last 15 years, as genetic improvement slowed and feed stocks reached peak nutrition.

Moreover, that genetic gain has been at a cost - these "edge of what's possible" animal genetics have to be supported with increasingly high levels of equipment and expertise. Farmers have been forced to buy more units of electricity per bird every decade to support the exquisite genetic improvements wrought in these birds. Farmers have been forced to invest more into shedding (housing) - the cost to build a new shed to fully meet processor requirements is now approaching \$2M.

However, at the same time as the retail price of meat poultry has been forced down by genetics, improved feeds, improved housing and technology, and increased labour expertise; fixed and variable costs like electricity, fuel, insurance, labour, council rates, etc - **all paid for by farmers** - have continued to rise at or above the inflation rate. While the RBA calculator identified that even between 2010 and 2023 farmers' costs SHOULD have risen by at least 40%, construction costs have risen faster than inflation. So what cost *circa* \$300 per square meter in 2010 (WA) is now quoted at \$550 per square meter in 2024 for a new build, an 80% rise (includes processor-demanded technology "upgrades"). But growing fees have on average risen only 25%.

This highlights that one of the key drivers to cheaper chicken has been the pushing of cost and risk down the supply chain until it can go no further. This has been broadly illustrated in the transport industry, the gig economy, couriers etc - when there is an imbalance of power between the entity "up" the supply chain and the entity "down" the chain (the supply chain having the consumer at the top).

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<sup>1</sup> ACMF Explains Why Retail Chicken Prices Must Rise: The Poultry Site, searched 10 Oct 2024.

<sup>2</sup> Coles RSPCA Approved whole Chicken Roast 1 each, \$10 discounted from \$12, searched 10 Oct 2024

<sup>3</sup> Doordash Free Range Whole Chicken 1 Each (ex IGA supermarkets), searched 10 Oct 2024.

<sup>4</sup> Sutcliffe meats whole chicken min 900g, searched 10 Oct 2024

This is very true of farming when there are few processors of farm produce. Thus we see meat poultry, horticulture and dairy particularly affected, but this is not the case for red meat, where there are multiple outlets for farm red meat produce including export. Therefore, red meat prices are more indicative of a true market. Notably however, there are Codes of Conduct in place for dairy and farm produce that assist farmers to have countervailing power.

In terms of retail chicken prices, the processors' continued "theft" of farmers' payments has inappropriately subsidised retail prices and processor/supermarket profits. This includes not allowing for depreciation on housing and equipment, reduction of payments for electricity once solar panels are installed, only allowing 50% of CPI adjustments on things like electricity, fuel, insurance and labour when these have actually risen by up to 45% between March 2021 and Sept 2023 ([Alan Fels report, 2024 SEE BOX](#))<sup>5</sup>, and driving additional labour workload (eg RSPCA accreditation and audit) onto farmers without any recompense.

Significantly, improving returns to farmers is likely to have little to no effect on consumer prices. This is because there is **complete uncoupling between of cost of production at farm level and retail pricing due to discounting, deals, and marketing.**

There only a few cents difference, for example, between what farmers are paid to produce a Free Range Chicken or a Barn Reared Chicken. Land cost is higher for free range chicken and growth rates are slower, providing theoretically lower throughput per farm per year for comparable farms. Barn reared chickens have the advantage of smaller land area, but increased costs of heating and cooling the birds and a higher labour component.

**TABLE 1. PRICE INCREASES: BETWEEN MARCH 2021 AND SEPTEMBER 2023**

Automotive Fuel	45.4%
International Travel and Accom	36.3%
Gas and Other Household Fuel	35.7%
Electricity	22.3%
Oils and fats	34.2%
Insurance	22.6%
New Dwellings Purchases by Owner-Occupiers	31.1%
Groceries:	
• Cheese	27.3%
• Bread	24.1%
• Milk	22.7%
• Ice cream and dairy products	22.5%
• Eggs	19.7%
• Breakfast cereals	19.2%

**EXAMPLE:** Growers receive around an average \$1 growing fee for a bird of around 2.8kg, or around 35c per kg. A whole roast chicken from the supermarket, which is one of the lowest-cost poultry presentations, is around [\\$12/bird](#). So AT BEST, growers receive, on average, less than 4% of retail chicken cost. (Note that dressing % is not included as virtually all parts of the bird are saleable (feet, feathers, giblets etc) and high value cuts (below) offset lower by-product prices).

That \$12 bird is around 1.65kg, or around \$7.27/kg. *Note that prime chicken cuts (breasts around 30% of total weight, thighs [around 25%](#)), which represent the majority of bird weight, retail for around \$16/kg (Coles) or up to [\\$34/kg](#) for free range.*

Secondary processed product, which uses small volumes of lesser chicken cuts bulked out with other ingredients (eg nuggets, tenders etc) can [retail for \\$14/kg](#) or more but have only 39% chicken meat in them.

**So the average actual "take home" for the grower is around 2.7% of retail cost.**

However, the retail price is hugely different for Free Range Chicken v Barn Reared Chicken.

Using the box from our previous submission, the retail price of a barn raised chicken can be as low as \$7.27 per kg, whereas free range chicken can retail for as high as \$34 per kg.

Converting the secondary processed product referred to in the box, the amount of chicken in nuggets or tenders rounds out to about \$35 per kg.

The consumer is apparently unconcerned about the effective cost of the chicken in their tenders/nuggets: they are buying by the *item* or by the *meal*.

<sup>5</sup> Inquiry Into Price Gouging and Unfair Pricing Practices Final Report Feb 2024, searched Oct 11 2024.

In the Free Range scenario, the consumer has other reasons for purchase than price and therefore any cost of production link with retail price becomes irrelevant. They are buying a perception of altered animal welfare, or a perception of a different taste, or a perception of altered medication use, or just a perception of being rich enough to afford it.

At a farming level this decoupling of retail price from cost of production can be extremely significant. Because the sheer numbers of chickens produced in Australia is so high, every 0.1 cent per bird that can be captured (or stolen) from a farmer's returns by the processor results in a very handsome and very direct return to the processor's bottom line, which can be used to offset company costs, appease shareholders, slightly increase short term discounting activity for consumers, or just pay your employee bonuses. So there is constant pressure from processors to gain concessions from farmers which may include vilification, coercion, and threats of loss of contract. The most common ways to achieve this include removing the farmer from the "pool", or understating the number of birds picked up at harvest, or having the weighbridge understate the weight of the birds as they enter the processing plants (because original weighbridge dockets are never supplied); or allege "excess mortalities", but there are a plethora of ways to achieve 0.1c savings.

**A Small Steal From Meat Poultry Farmers Means Big Biccies For The Processors**

- Chickens produced in Australia for consumption annually = **734,299,200** (Sept 23-Jun 24)
- Every chicken is grown by a farmer
- Processor "steals" **just 0.1c/chicken** from farmer by coercion, contract manipulation, or worse
- Processor/supermarket benefit = **\$734,299.00** mostly to the 2 large processors.
- That 0.1c/chicken (0.036c/kg) can be the difference between profitability or not for the farmer. It has NO effect on retail price!

**However**, if the average grower's fee increased **by 50%** from \$1.00 to \$1.50, the average consumer price rise that might be expected on the cheapest \$10-\$12 bird would be \$0.17. Noting that the "regular" price of this cheap bird is \$12, the potential 17c rise per kg is far exceeded by the nature of discounting, which is a \$2 discount.

In the case of the \$34/kg free range bird, or the \$35/kg secondary processed bird, a 50% rise in growing fee to farmers would represent a 1.5% potential increase in consumer retail price (assuming no "cost plus") pricing. Again, this is exceeded in orders of magnitude by the rate of rise and fall discounting.

(There is a similar corollary in the Dairy industry: since the implementation of the Dairy Code of Conduct in Jan 2020, supermarkets have moved milk prices from around \$1/Litre to around \$1.50/L, which is far in excess of the additional funds that have been transferred to the dairy farmers under the Code. That this is excessive is easily illustrated by recent events where supermarkets and processors have been able to [drop the price to \\$1.45/litre](#)<sup>6</sup>. Coles, which sources its milk directly from farmers and bypasses the processors, sells for [\\$1.45/Litre](#)<sup>7</sup>. This implicitly suggests that Coles is "milking" what used to be the processor's profits.)

<sup>6</sup> Supermarkets drop milk price for the first time since 2011 as farmers fear return of 'milk war': ABC news, Tues 8 Oct, searched 11 Oct 2024.

<sup>7</sup> Coles Full Cream Milk 3L, Coles website, searched 11 Oct 2024

**3.1.2. Australians have expressed concerns about their supermarket shopping experiences: Consumers report changed grocery shopping choices due to unaffordability**

Consumers are well known for *reporting* buying activity that is not identical to what they actually *do*. For example, when polled, a huge majority of consumers report that they wish to buy cage-free eggs; yet even in the face of cage eggs being legally phased out by governments under significant animal activist and media pressure; still 30% of consumers buy caged eggs.

If the consumer reports are true, it may be more nuanced and “by sector” than simply switching within sector. For example, the graph below plots the production of chicken meat in Australia, noting that more than 97% of meat chickens are consumed locally and not exported.

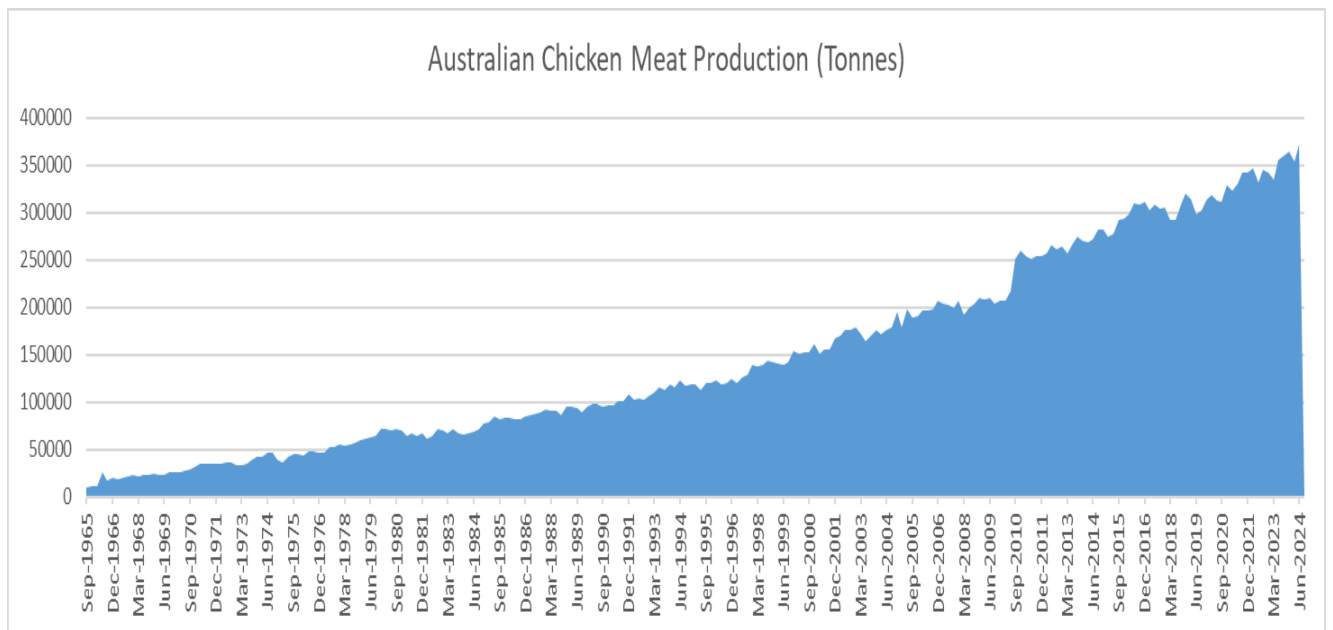
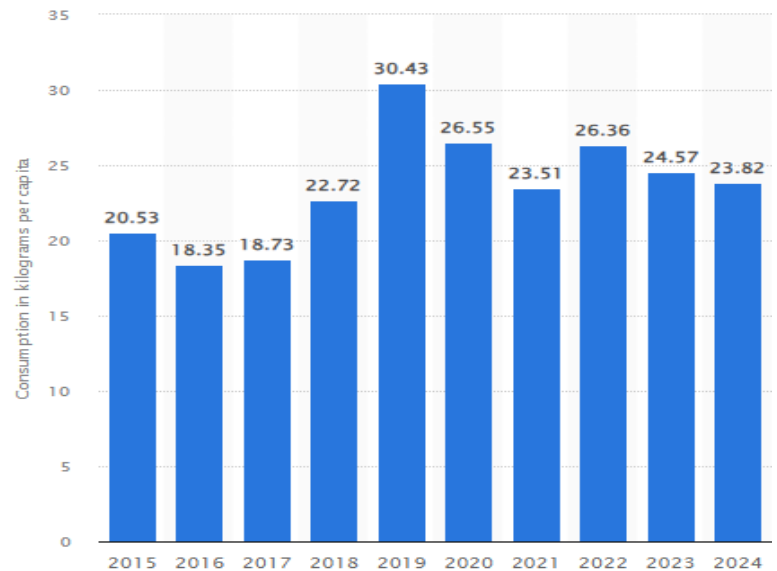


Fig 2: Meat Poultry production in Australia in Tonnes ([Source ABS](#))

The curve appears to be multi-phasic with a change in gradient in approximately 1996 and another significant change around June 2010. Because chicken is the most affordable of all the meats, changed meat shopping choices due to unaffordability should have resulted in a recent jump in chicken meat tonnes produced (noting that prices have risen only slightly and that production is closely aligned with demand as this is predominantly a fresh product). Equally we would have expected a rapid fall in red meat consumption due to substitution.

However, not only is neither of these outcomes the case, but production appears to counter the expectation from the consumer survey. After a rise in beef consumption during the pandemic period, beef consumption appears to have returned to longer term averages after a rise during the pandemic. This is shown in the graph.

*Fig 3: Per Capita Consumption of Beef and Veal in Australia (kg/capita)*  
Source: [Statista](#).



### 3.1.3. Remote and low-income consumers likely experience more acute grocery affordability issues

Remote consumers are more likely to experience more acute meat poultry affordability issues because:

- The average income of remote consumers is lower than in urbanised areas
- Meat poultry is generally sold as fresh (with a relatively short shelf life) or frozen product and hence requires specialised and rapid transport. The fresh produce may have a higher wastage rate as a result.

### 3.1.4. Supermarkets are an important channel for businesses that supply food products

This situation is particularly acute for meat poultry. As a highly perishable product (fresh) requiring specialised storage (refrigeration for fresh and freezers for frozen secondary processed product) and without a meaningful export market, the meat poultry industry is particularly vulnerable to supermarkets as a distribution channel in a way that most other commodities are not. This worsens the countervailing power situation for farmers, because they do not own the birds and as a result the processor becomes the proxy for the supermarket in contract negotiations.

### 3.2.2. Supermarket ecosystems and vertical integration

At one level vertical integration of supermarkets is to be applauded, because it shortens the supply chain and thus potentially makes pricing more transparent. However, as we have seen with Coles-direct milk, there appears to be no benefit to the consumer as Coles pricing is the same as that through the processor, thus Coles is capturing the processor's margins.

This is less likely to occur in the meat poultry industry as there are only two processors with licenses to the two international genetics companies needed to produce commercial poultry. Unlike the dairy industry where there are known to be [7 major processors](#) and much larger



number of small operators including boutique and craft operations, in the meat poultry industry there are only 2 major processors and the total processors is only around 9.

However, in the event of a hypothetical takeover of one of the two major processors by a supermarket, this potentially makes life no better and possibly worse for meat poultry farmers because the countervailing power issues are unchanged. At the moment, the two major processors are effectively proxies for their supermarkets, the balance would be unchanged if the supermarket owned the processor.

It is worth remembering that the “job” of the supermarkets under Corporations Law is to maximise value to their shareholders, NOT their customers.

### **3.3. ACCC's role in the grocery sector**

#### **3.3.1. The ACCC administers and enforces the Competition and Consumer Act, including the Australian Consumer Law**

Sadly, while the ACCC has been highly empathetic to meat poultry farmers' concerns, it has been of little value in monitoring unconscionable behaviour and contracts in the meat poultry industry over many years, including with the advent of the recent changes to the law. This is because:

- ACCC enforcement is a complaints-based system. If nobody complains, then there is no enforcement because of natural limitations in resourcing and prosecution activity of the agency. There are plenty of companies that should be prosecuted out there! In the meat poultry industry, any farmer who makes a complaint can expect to see their contract terminated - not always instantly, but always. With no other processor with whom they can contract; that farmer loses his business, his farm and usually his home.
- Meat poultry contracts are excessively complicated for a reason. Not only do they fail to outline the way the “competitive” pools system is administered, they fail to include quality manuals that can be modified on a whim by the processor at any time. They fail to mention that the latest marketing trend can result in farmers being forced to “upgrade” their farms mid-contract or as a condition of renewal, costing up to millions of dollars. They not only no longer include financial consideration in the event of an emergency disease outbreak, but in fact now threaten legal action on the farmer if he fails to follow a “biosecurity manual” which can be changed at will and CANNOT be achieved because of processors' unfettered and unrestricted rights in the contract to put their servants of employees onto a farm at any time with no biosecurity consideration. Many include hugely complicated growing-fee reviews that do not consider CPI rises, or fail to consider depreciation - on pain of loss of contract at renewal. So a contract that may look OK at commencement may actually be unconscionable in the implementation, but ACCC cannot look at issues like that where no complaint is made.
- ACCC is restricted by resources in the cases they can prosecute, and farmers cannot afford their own actions under the ACL. For resourcing reasons and to remind business and the public of their obligations, ACCC is largely forced into taking on precedent setting cases, or large cases, or cases that will resonate with business and the consumer. “Mr Chook Farmer” falls into none of these categories. In addition, processors carry out unconscionable behaviour day-to-day and often verbally “one on one”, which is harder for ACCC or anyone else to prove. In the rare case that “Mr Chook Farmer” does endeavour to take legal action

on his processor, not only are these cases larger than that which could be settled by Civil Appeals Tribunals, but the processor has long pockets and staff lawyers who can simply price the farmers out of the case in delays and fees.

- Class exemptions have been marginally useful in that farmers can “talk” to each other and negotiate as a group, but this has not stopped some processors from refusing to recognise these and insist on only speaking individually to farmers; or simply failing to negotiate on new contracts at all - knowing that the banks will step in and effectively force farmers into signing bad contracts for the sake of their loan surety – and knowing that while there is no new contract, they get to still pay the “old” price (in the case of a key group of Tasmanian farmers, a 7 years “old” price while costs have risen significantly).

For all these reasons the meat poultry farmers have been begging for a mandatory Code of Conduct - the likes of which have served the Horticulture and Dairy industries well. It has also been announced that the [Food and Grocery Code will become mandatory](#) and while the Perishable Agricultural Goods Inquiry and the Interim Report have recognised the imbalance of power; government seems to confuse meat poultry farming with supermarkets and has stopped any positive action on this issue.

### **3.3.2. The ACCC monitors industry consolidation and change**

Notably, monitoring does nothing for competition, countervailing power, supermarket pricing or consumer outcomes.

In the last 20 years the ACCC has only been able to watch while:

- The number of meat poultry processors has dropped from 14 to 9 and major processors to only 2.
- The number of turkey companies dropped from around 10 to 2
- The two major meat poultry companies establish direct control over 90+% of commercial meat poultry genetics
- A rapidly developing vertical integration of the two major processors into feedmilling, resulting in an emerging countervailing power issue in the market for soy meal for poultry feed for the *layer* industry,
- Geographic consolidation to occur so significantly that most farmers have only ONE processor with whom they can contract.

None of this “monitoring” has improved competition or consumer outcomes, or countervailing power for farmers.

NOT ONCE has ACCC stepped in to stop a processor take-over, or acted any of the issues above, largely because it has been unable to. The meat poultry industry needs an upgraded and updated regulatory framework including a Mandatory Code of Conduct to stop the situation becoming worse.

The geographic consolidation of the meat poultry industry is dramatically illustrated below.

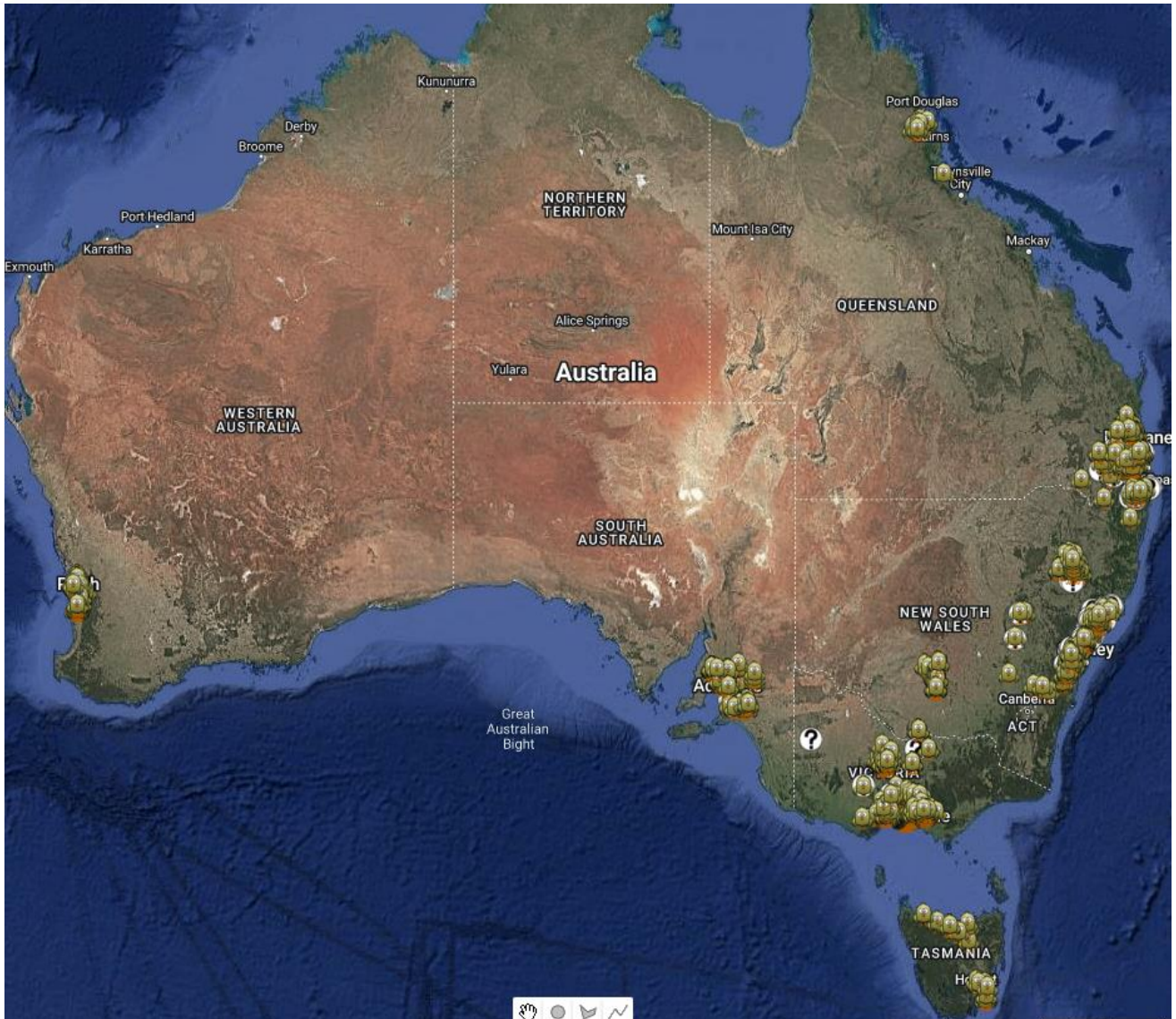


Figure XXXXXX: Geographic consolidation of Australian meat poultry farms. Source: [Farm Transparency Project](#)

- Key:
- Perth: Baiada, Inghams
  - SA: Baiada (larger farms), Kopro (smaller farms) – divided almost completely by size.
  - Tas: Nichols (north), Inghams (south)
  - Victoria: Inghams (mainly east), Turosi (mainly west), Hazeldene (small operator in the north)
  - NSW: Griffith = Baiada  
 Tamworth = Baiada  
 Hunter Valley = Baiada (incl Baiada turkeys)  
 Central Coast and western Sydney = Cordina  
 South of Sydney = Inghams turkeys
  - Qld: FNQ = Baiada  
 SEQ = Inghams

### 3.4.2. Reviews recently undertaken overseas

It is worth noting that supermarket reviews overseas have not extended into the supply chain, but:

- Almost no other country has a supermarket sector as concentrated, OR a meat poultry processing sector as concentrated, and none worldwide as concentrated for processor control of genetics,
- The USA is the “world’s worst” example of failure to assist farmers with any form of countervailing power regulation. Because of this, there has been failed investment into farms and very high rates of bankruptcy<sup>891011</sup>. This country has very [high rates of Salmonella contamination](#)<sup>12</sup> of chicken, higher rates of all forms of disease, poor biosecurity resulting in very severe losses from the HPAI H5N1 Avian Influenza outbreak (including “leak back” into wild bird and potentially dairy populations), and poor animal welfare conditions compared to Australian farms. However, the continued squeeze on farmers by supermarkets/processors in Australia is now playing out in a similar fashion to the USA, with decreased rates of investment into farms and concerns over long term food safety and biosecurity for Australian consumers.
- Europe has a much less concentrated supermarket system compared to Australia and an even less concentrated meat poultry farming sector - with no individual processor controlling commercial genetics. In some countries farmers can even buy their own genetics/hatchlings, grow their own meat poultry and sell to established processors alongside the “contract farmer” model. There are a significantly larger number of processing companies as well - resulting in more choice for farmers, more balanced competition and much better relationships between processors and farmers.

Nonetheless, the EU still noted that 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, their primary recommendation has been for institution of 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.

### 4.4.2. Buyer-side market power: Bargaining Power and Monopsony Power

In the meat poultry industry buyers (processors and the supermarkets) have complete control over terms of trade with their suppliers, because in most cases there is only a single processor to whom a farmer can contract, and farmers cannot independently source

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<sup>8</sup> <https://www.dtnpf.com/agriculture/web/ag/crops/article/2024/10/09/startup-iowa-poultry-plant-closes> , searched 12 Oct 2024

<sup>9</sup> <https://investigatamidwest.org/2024/05/08/early-morning-calls-barren-chicken-barns-millions-in-debt/> searched 12 Oct 2024

<sup>10</sup> <https://www.kosu.org/2024-09-17/tyson-lawsuit-chicken-farmers-closed-missouri-plant> searched 12 Oct 2024

<sup>11</sup> <https://www.theguardian.com/environment/2019/aug/03/is-the-us-chicken-industry-cheating-its-farmers> searched 12 Oct 2024

<sup>12</sup> CDC Food Safety: “[Chicken and Food Poisoning](#)”, searched 12<sup>th</sup> Oct 2024

genetics to grow their own birds and sell to any processor. This mainly plays out in financial terms - farmers are experiencing worse and worse terms of trade, the point where a significant group is now producing below the cost of production OR “running their farms down” with the future risk to food security, food safety and biosecurity.

In relation to “relative bargaining power” - farmers have NO “outside option” if bargaining fails because there is generally only one processor with whom they can bargain. Moreover, new “high tech” shedding has almost no use outside meat poultry production (perhaps a small few could convert to mushroom production, but that is a small and finite market already well served, or laying pullets/barn eggs - again well served market). Meat poultry farms are often too small for other livestock production, and horticulture is generally not possible because the land mass is covered with sheds. Farmers have no ability to source their own genetics and grow their own birds as processors have control over this - and in any case current “high tech” genetics requires specialised nutrition and nutritionists who are also generally controlled by processors.

This non-existent relative bargaining power has gone well beyond efficiency enhancing, but is difficult to quantify beyond the fact that many meat poultry farmers, particularly those recently joining the industry or with high-tech shedding are now producing at or below the actual cost of production. As a result, more than 20% of all farms are currently listed for sale, with few to no buyers emerging. So there is no renewal of the industry, next-generation is leaving and even corporate farms are restructuring. After a highly publicised entry into meat poultry farming in 2019-20, Fairglen has quietly left the industry after selling many properties at a loss, another corporate is sitting on DA’s that are not being built, and Proten [is being restructured](#), with the potential investor having an eye to [strategic property investment](#) rather than food production *per se*.

Even processors are limited in their relative bargaining power with supermarkets, because they have not developed any viable export market beyond a small market in by-products and some specialty products (around 3%). However, they do have some alternative markets in fast food and food service.

Monopsony power is complex in the meat poultry industry, partly because production is constant, consumption is varying little, as are prices.

However, the meat poultry sector is significantly underinvesting in the face of a significant increase in population, and in particular from those countries that most commonly consume meat poultry.

The Australian Chicken Meat Federation (ACMF) estimates that Australia will need to build an additional 700 sheds in the next 10 years to meet Australian’s demand for 50kg chicken per capita per year. However, new shed building has slowed in the face of rising construction and operating costs and no growing fee increases, and old shedding is rapidly going out of service as old farms who had not had ongoing investment close and their farmers (who have been unable to sell or convince their offspring to join the industry) “retire”. It is also becoming increasingly difficult to achieve approved Development Applications (DA’s) for greenfield sites due to resource allocation of water, difficulty in sourcing quality labour, and increasing skittishness by banks.

With government action to ban cage egg production, there is also a significant movement for old meat poultry sheds to convert to pullet raising or even barn/free range egg production. For these farmers, turnover is the same or slightly lower, but costs are significantly lower, and there is none of the thuggery by processors that is seen in the meat poultry industry so far. This movement is now so significant (in the face of reduced shed building) that we are advised from a factual source that meat poultry processors are now “putting the pressure on egg companies”, threatening their sources of feed in come cases if egg companies “steal” any more meat poultry farms for egg raising.

At one level this is the market in operation: but at another level this is likely to threaten food supply and food safety of a key staple food for Australians because of excessive monopsony behaviour and daily, ongoing, offensive, unconscionable conduct.

#### **Buyer power in grocery supply chains**

In terms of buyer power, it is worth noting that meat poultry may well be in the most invidious position of any other supermarket goods in that it is:

- Predominantly sold as fresh produce (around 70%), with a very short shelf life, requiring specialised transportation and storage.
- Incredibly homogenous - in fact, it is often difficult to readily notice the processor label on fresh product and there is no evidence that the customer cares anyway, and
- Incredibly reliant on supermarkets for distribution due to lack of effective export market, relatively small restaurant/catering options compared with red meats, and [a declining “take away”<sup>13</sup>](#) market (including substitution for other options within the takeaway market, eg Sumo, GYG Grill’d etc).

#### **4.5. Information asymmetry in grocery supply chains**

This is a hugely significant problem for farmers within the meat poultry supply chain, with complete decoupling of retail prices from farmers’ costs of production, thuggish and unconscionable behaviour by processors, and supermarket pressure on processors.

#### **4.7. Equity and competitive markets**

Sadly, this section of the report is entirely based on the theoretical, and fails to consider the extent to which companies will manipulate markets through branding and marketing, false discounting, consumer behaviour not being rational, use of market power to manipulate contracts, “non-collusion”, or oligopolistic behaviour.

The section of the report suggests that farmers that are not able to adapt to change lose - which is at odds with the observed in the meat poultry, where it is the oldest and least change adapted farms that are operating most comfortably and at least cost, and the newest and most change adapted farms that are effectively operating at a loss. That is NOT to the benefit of the consumer or competition in the long run, and risks food security ,food safety and biosecurity.

(One NSW processor openly admits one of his best growers still operates with “traditional” shedding which suggests that stockmanship remains the key to efficient outcomes.

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<sup>13</sup> News.com.au, 23 August 2024m searched 13 Oct 2024.

Ironically that company's top award was won by a part "high spec", part "traditional" farm which recently suffered a technical breakdown in its "high tech" sheds for unexplained reasons with the resultant death of 14 000 birds at marketable age. Note that in this case the breakdown was deemed to be the farmer's fault, and he was forced to pay for the bird losses.)

#### **5.1.1. Grocery prices have increased significantly over the last 5 years**

Meat poultry prices have barely moved over the last 5 years in spite of costs of production rising on average by at least 36%, because the supermarket/processor cooperative has forced farmers to subsidise consumers by not allowing growing fee rises to cover additional costs.

Notably, the key operating costs noted in the Fels report - insurance, fuels, gas, labour, and electricity - have increased farm costs well in excess of 36% in many cases - for no increase in growing fee.

Contract conditions require renegotiation after certain periods (usually 5 years, but this may be as low as 3 or as long as 7 or 10 in rare cases). Inghams, for example, has simply stalled contract negotiations for more than one state by verbally agreeing to change and then presenting the previous offer in writing, by refusing to meet at times, by refusing to accept reasonable argument as to costs rising, even when presented with actual invoices, by delaying written contract drafts after negotiation (in one case by more than a month), by demanding a national contract and then pulling away from this stance, by returning to previous negotiation stances after new options have been agreed, and so on. By doing this, Inghams effectively keeps the old contract running even though it is outdated - at the old service fee.

Farmers cannot "strike" because they are contractually bound to accept birds, because birds are hatching daily (and not to accept them would be an animal welfare disaster), and because they would not be offered a new (renewal) contract if they did so. In the meantime, most bank loans in the meat poultry industry are only offered on the proviso that there is an operating contract between the farmer and processor, so eventually some farmers are forced to sign bad contracts.

#### **6.1. Supermarket pricing and promotional practices**

It is worth noting that fresh chicken is rarely caught in the discounting cycle, we suspect for reasons that (a) chicken is now considered a staple food and only significant changes to pricing would be likely to result in additional sales, and (b) discounting is not needed for that reason. The 'per kg' price of fresh chicken is almost identical between all the supermarkets, and tends not to differ between them. Similarly, fresh chicken is not generally subject to promotional activity. Even in the secondary processed, frozen chicken market (Tenders, Nuggets etc) there is relatively little promotion at processor or supermarket level. There is no marketing or promotional activity at all for turkey meat.

Similarly, price comparison and per unit comparison for fresh meat poultry is generally among the easiest of grocery products. Fresh product is sold by the kg, and the product quality and quantity can be easily visualised because it is presented in transparent packaging.

This is, however, much more difficult for secondary processed (including) products - if can be difficult to compare the % chicken meat in a processed product, and impossible to compare the costs of that chicken between brands. Thus “chicken tenders” might contain 40% actual chicken meat (Inghams brand) or 63% (Coles Brand) - but Inghams advertises that their product is “...made with 100% Aussie chicken breast meat..”.

### **7.1.3. The Australian supermarket industry is highly concentrated; Coles and Woolworths represent a substantial proportion of retail supply**

This section notes that the supermarket sector is “highly concentrated” with *“The largest 3 supermarket operators by revenue, plus Metcash as a proxy for Metcash-supplied independent supermarkets, accounted for 83% of supermarket retail sales in FY23”*

It is on this basis that there has been a huge investigation of the supermarket sector, with media, Ministers and advocates all lining up to highlight why such highly concentrated markets should not be allowed to occur. Similarly, there has been a tremendous degree of understanding of what this has done to selected groups of suppliers, namely the horticulture and dairy sectors.

The Minister has already announced that the Food and Grocery Industry Code will be made mandatory. A mandatory horticulture Code of Conduct has been implemented, as has a mandatory dairy industry Code of Conduct as a result of these behaviours.

However, in the meat poultry industry the actions of the two processors to control more than 90% of the commercial genetics of meat poultry in Australia, more than 70% of supermarket share of chicken meat sales, more than 98% of turkey meat sales and genetics, and now exerting a level of control into other industries, namely the egg industry.

How is this not at least as significant a market failure as the above? Why is there no recommendation for a mandatory Code of Practice for the meat poultry industry?

### **7.3.4. Serial acquisitions: Possible Reforms to the Merger Regime**

Acquisition of market power is measured in total, not by sector. That is because key sectors of the business are dependent on size to be employed effectively. For example, few noticed the takeover of feedmills by the two main processors, but the effect are being felt now in the meat poultry farming sector with forced blockage of farm sales or farm transfers to egg operations. For example, only companies of a particular *aggregate* size can afford groups of highly trained negotiators to stall contract negotiations with groups of small farmers, or highly trained corporate lawyers to stall any complaints of unconscionability in the civil litigation system.

Mergers need to be considered in a broader landscape than they are currently.



### 8.1. Profitability of Coles and Woolworths

It is worth noting that the job of a company is to make a profit. In the case of publicly listed companies including the supermarkets and Inghams (one of the two major meat poultry processors) they have an obligation under Corporations law to maximise company value for their shareholders – not their customers.

That almost by definition means that they must engage in any legal activity to “maximise profit in the short term”<sup>14</sup>, so nobody should be surprised if those participants in the supply chain who have market power use it to the best of their abilities. Sadly, that means crushing farmers.

The issue arises where one competitor thinks that behaviour might have “gone too far”, but is effectively forced to follow suit because that is what the other competitor is doing, to avoid perceived or actual disadvantage. So we see an inevitable “race to the bottom” - and overshooting of economic efficiency into underinvestment, distress and destruction of small business and bankruptcy. Economic theory, sadly, only measures \$ and not the human, food safety, food security or biosecurity costs, or the inefficiency of having business infrastructure like farm shedding lying idle due to forced retirement or bankruptcy.

An efficient and orderly market can only be achieved with a strong regulatory underpinning to enforce and uphold standards. In the Horticulture and Dairy Industries this has only been able to be achieved with a mandatory Code of Conduct.

#### 8.1.2. Risk and return

ACCC notes that “ *By way of example, in general we expect an infrastructure business will have lower risk and lower returns .....*”

Notably in the meat poultry sector, farmers carry *at least* 40% of the risk as they hold 40%+ of the assets and in addition a reasonable % of the business risk, but have very poor returns that are continuing to diminish as processors and supermarkets exert their considerably oligopolistic market power. Their business is made risky by single-client contracts, highly specialised equipment and high levels of leverage. Notably, processes have and largely continue to offload risk to all their suppliers - by contracting, by contract clauses, and by sale and leaseback. However, once farmers are trapped in this cycle there is effectively no way out, if they cannot renew their contracts they have no business and the banks bring in their loans. So they are effectively forced to sign contracts that continue to diminish their returns.

For those that enter meat poultry farming the turnover looks good on entry, but on renewal that farmer is trapped.

#### 9.1.4. Trends in upstream supply chains

The report notes that there has been a trend towards farm numbers declining, in part due to farm consolidation. This is only partly true in the meat poultry industry because the processors are unhappy about the potential for farmers to countervail their own power:

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<sup>14</sup> Australian Institute of Company Directors, *Pers comm*.

- One processor has blocked the sale of a farmer's large farm - three times - because they do not wish the potential buyer, who is already a significant corporate player - to further increase its holdings as a % of his total growout. The farmer's contract specifically states that the processor can refuse to allow transfer of a contract to a buy if the processor has the opinion that the buyer cannot grow chickens effectively - this is not the case here, but the outcome is the same.
- One processor has (or had) written as a clause in its recent contracts that holdings by a particular corporate player could not exceed 20% of its total growout – presumably as a warning to farmers not to try and sell to a corporate.
- It is interesting that more than 20% of the total number of farms in Australia are either listed for sale or involved in corporate restructure, but investment is weak and banks are increasingly jumpy about loans in this sector.
- It is worth noting that as specialisation of infrastructure increases, the risk to farmers owning this infrastructure is rising, not falling.

#### **9.1.5. Role of industry codes**

It is worth noting that the ACCC calls Industry Codes “a set of rules or standards of conduct for an industry, including the relationship between industry participants”. No such Code exists for the meat poultry industry in spite of multiple reports of unconscionable behaviour and market power imbalances.

While Codes do not solve every issue, the overwhelming feedback appears to be that they have assisted farmers, improved transparency, and improved lives. The only real negative feedback appears to be that dispute resolution systems require strengthening to reduce retribution. This can be readily resolved, and while there is no question that retribution is a risk to meat poultry farmers who “complain”, this should not be an impediment to introduction of a mandatory Code of Conduct for the meat poultry industry.

#### **9.2.1. Supplier ability to effectively negotiate on price**

There is no question that there should be an effective balance of power between the two powerful supermarkets and the two even more powerful processors, but this is tinged by issues relating to products and behaviour as noted in the previous submission.

Nonetheless chicken is a staple product and only the two major processors have the volume to supply the two major supermarkets. The recent move by Woolworths to split supplies to include both Inghams and Baiada and thus [reduce its reliance on Inghams](#) product only really meant that Coles had to source more supply from Inghams, since national production is approximately equal to national consumption.

Outside “gameplaying” from supermarkets, processors cannot say they are not effectively able to negotiate on price, but they choose not to while it is easier to retrieve funds from farmers (and, we are advised, other suppliers). However this is not without cost, even for processors, because lack of investment by farmers and other suppliers can cause problems for the processors.

For example, Inghams built and [operated a processing plant at Bolivar SA](#), and then sold and leased back the facility. After a significant number of problems with the contract Inghams was effectively [forced to buy the facility back in 2024](#) for \$76M, and invest in upgrades to meet the needs of their business including new deboning equipment. Lack of investment has consequences, and in a food industry these can be concerning.

It is well known within the industry that supermarkets have 'allowed' processors to underbid each other for market share. This reduction in wholesale pricing has been renamed by the processor as 'market power' impact when negotiating reduced growing fees with farmers.

### **9.2.2 Information Asymmetries: Supermarket access to information about suppliers' business operations**

There is no doubt that processors have the most access to information about the business operations in the complete meat poultry supply chain.

Processors have access to some of the supermarket's financial information via publicly available documentation since the two major supermarkets are ASX listed, and can accurately forecast some of the granular information (eg storage costs, transport costs etc) as they have these costs themselves.

At the other end of the supply chain, processors have complete access to farmers financial information because they demand it - usually at the time of farm purchase, but also in the negotiation process when they ask farmers to prove any cost increases with actual invoices.

Supermarkets have no visibility of processors' financial information except that which is available in the public domain (Inghams is publicly owned) or that which they can require processors to provide. They have no visibility of the farm cost of production at all.

Farmers have no visibility of supply chain financials outside their own, except that which is in the public domain.

It's an almost identical situation for information asymmetries.

### **9.2.2 Information Asymmetries: Quality assessment and rejection process in fresh produce**

Beyond the quality assessment process and perhaps partly because of it, processors enforce a strict and rigid quality assessment on farmers, which they in most cases meet. However, bird quality can be poor for reasons outside the farmer's control eg due to change in feed formulation or quality, due to age of breeder stock (which changes the mortality rate and robustness of the chickens), disease in the flock (such as is seen in some batches of live virus vaccines). Sadly, farmers work harder on these batches to try and bring them up to standard. However, they are compared with other farmers in a "pool" where money is taken from "inefficient" farmers and given to "efficient" ones. However, the inputs to this pool are not the same, they vary over the weeks of comparable farmers in the pool and this may include feed type and formulation, donor flock and vaccination response.

Farmers may be deemed "inefficient" and paid less than the growing fee even though they worked harder to redeem the batch...

**9.2.3 Concerns raised by suppliers about trading terms and arrangements: *Accreditation and auditing requirement***

Supermarket audit requirements and costs are increasingly being pushed “down the chain” to farmers. RSPCA accreditation - demanded by supermarkets and implemented by their proxies, the major processors - cost farmers thousands of dollars annually in additional workload, additional paperwork, and worry. This “accreditation” has some questionable elements particularly around litter management (ie additional work for no gain to the birds), and there is an Australian Welfare standard in place that already generously meets the requirements of the birds. Farmers may or may not receive additional compensation for density changes under this scheme (most don't) , but there appears to be little to no benefit to the consumer or the birds: it's largely a marketing scheme for which the RSPCA has reaped \$20M to date.

**9.3.1. Supply chains to be further examined by the ACCC**

We remain ready to assist, but any interviews with farmers are likely to require non-voluntary attendance. We also note that there is significantly more information than in this submission that we would be happy to share.

Yours Faithfully,

*(by electronic transmission)*

Joanne Sillince BVSc (Hons) MBA FAICD