

Ms Charlotte Wundersitz
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Dear Charlotte,

RE: RESPONSE TO INTERIM REPORT: EXPLORING THE POTENTIAL FOR A CODE OF CONDUCT TO INCREASE MARKET TRANSPARENCY AND COMPETITION IN AUSTRALIAN POULTRY MEAT SUPPLY CHAINS.

Thank you for the opportunity to comment on the Interim Report. Please note that the term “farmer” and “grower” may be used interchangeably to describe contracted meat poultry farmers; and page numbers (eg P44) indicate the page number at the footer of the Interim Report.

Our responses are as follows:

1.0 Terms of Reference

In general terms, the report appears to have adhered to the Terms of Reference set by the Department of Agriculture, Fisheries and Forestry in relation to the project. The report also appears to be in confluence with the major findings of the Perishable Agricultural Goods Inquiry undertaken by the ACCC.

2.0 Consultation and Engagement

2.1 In general terms, it appears that the stakeholders, including supermarkets, processors and growers had ample opportunity to express their views. This includes the surveys, workshops and in many cases individual contact (including for processors, supermarkets and growers). It appears that NFF and their subcontracted partner NSWFarmers Association went to great lengths to seek comment from various groups. A Steering Committee and Advisory Group were invited to comment in meetings. There were opportunities for comment for those committee members outside formal meetings.

2.2 ACGC has had some complaints from individual growers who felt so intimidated by the potential for retribution from their processor that they did not feel comfortable contributing to the Project. However, ACGC is pleased that the number and nature of surveys and attendees at the workshops represents a relevant statistical sample of chicken growers across Australia, even noting that some growers found the risk too great for them to engage. ACGC chose not to present a submission to the Project directly, relying on growers to make their views heard.

3.0 Operation of the Project

3.1 ACGC is comfortable that the general operation of the Project was fair and ethical. Growers were treated with respect, and raw grower data was made available for review as reassurance that there was no editing of the findings in the workshops. In addition, the

consistency of the responses through the surveys and workshops is a close match to that which had been transmitted to ACGC over at least the last 20 years.

4.0 Retail Response to issues raised.

ACGC notes and is heartened by the retailer response (P44) offering to commit to a Mandatory Code of Conduct in this industry, and willingness to participate in a more transparent supply chain.

5.0 Conclusion Re: Mandatory Code Recommendation

4.1 From the data presented in the Interim Report, there is no question that a mandatory Code of Conduct is likely to be the only way to engender fair negotiation and some transparency in the supply chain. Voluntary Codes of Conduct have failed all over Australia, and to take a philosophical stance that “bodies must be on the ground before we will move to mandatory” is likely to further disincentivise investment, constructive business relationships and bank lending practices.

6.0 Similarities with Other Industries Which Have Instituted a Code

5.1 The Interim report shows both the similarities with the situation faced by the Dairy Industry prior to the mandatory Dairy Code of Conduct, and the even greater vulnerability that meat poultry growers face compared to dairy farmers. This is particularly in relation to processor concentration, high capital cost single-industry housing and equipment, and historically difficult and threatening contract negotiations. Meat poultry growers are completely at the whim of their processors.

Issues/problems Identified within the report.

7.0 Timelines

7.1 ACGC wishes to identify significant issues with the timelines of the Project and the report. With costs rising, processors continuing to engage in appalling business behaviour off an already dreadful base, while apparently reaping the profits of price rises. Growers have had to deal with high interest rates; and the slow pace of the project, which could reasonably have taken place in half the time period, has wreaked ongoing economic bashing for growers and set up the industry for a bad future economic period.

This is because of the pent-up economic pressure on growers (due to prolonged period with no contract upgrades), and perhaps even on processors who are feeding expectant shareholders, which will have to spill over into either bankruptcies or a significant consumer price rise. This is a Project on the back of an Inquiry which has followed multiple discussions with ACCC and lawmakers, following years of grower-bashing which followed necessary state legislation overthrown by unproven and ultimately failed economic *philosophy*.

While this process drags on, processors are currently actively trying to pressure growers into “draconian” contracts ahead of any decision that might be made by the Minister; with threats to leave the industry or a geographic area, threats to understock or destock farms and threats that this will affect consumer pricing. In addition, a number of growers have reported processors telling their groups not to touch or communicate with the supermarkets. The latter is presumably a threat related to the supermarket comments on p44 of the Interim report supporting a Mandatory Code, and suggests that processors might be concerned about price transparency in the supply chain.

7.2 It is time to ACT decisively and permanently to provide stability for the industry and encourage much-needed investment.

8.0 Acceptance of Processor comments “verbatim” (P40-46)

8.1 The interim report carefully analyses the “pros” and “cons” of the history of industry behaviour, market conditions, industry relationships and the feedback from growers, however, the comments of the processor appears to have been simply plonked into the report with no analysis or questioning of their statements, many of which are clearly erroneous.

Moreover, the processor section makes a large number of allegations and assertions, some against the NFF who is authoring the report, some against growers, some against the system, with NO fact and not even examples. It’s simply assertions, which appear “to be swallowed whole” by the report author.

8.2 The interim report notes the processors comments that:

8.2.1 “..any price increase due to over-regulation would detrimental to the industry and consumers” (P40)

There is no evidence, from other mandatory Codes of Conduct including Wine Grapes, Dairy and Franchising, that Mandatory Codes of Conduct have either resulted in over-regulation of detriment to the industry and consumers. In fact, in a recent conversation with Dairy Australia on the 4th anniversary of their Code, they noted that for the first time in nearly 20 years farmers were reinvesting in their dairy farms.

It is of no benefit to the industry or consumers if growers cease to exist, indeed in the dairy industry failure to institute a Code in good time resulted in Australia converting from being a net-exporter to a net importer of dairy products, to the direct detriment of the country’s accounts.

Thirdly, while the most efficient consumer pricing is a measure of an efficient supply chain, it is NOT the case this should be at the cost of sections of the supply chain operating at a loss. Growers should not, and cannot, subsidise consumer prices. That there is discussion on this point highlights the lack of price transparency in the supply chain.

Growers receive around \$1 growing fee for a bird of around 3.0 kg, or around 33c per kg. A whole roast chicken from the supermarket, which is one of the **least**-cost poultry presentations, is around \$12/bird (Coles). So at best, growers are currently receiving, on average, **less than 2.7% of retail chicken cost**.

That \$12 bird is around 1.65kg, represents around \$7.27/kg.

Note that prime chicken cuts (breasts, thighs), which represent the majority of bird weight, retail for as much as \$17/kg (Coles). Secondary processed product, which uses small volumes of lesser chicken cuts bulked out with other ingredients (eg nuggets, tenders etc) can retail for \$11/kg (Coles) or more.

It is clear from this data that there is significant price capture at the level of the processor and supermarket, and any price rise attributable to normal profit for meat poultry growers will be miniscule.

The Interim Report has failed to analyse any of these issues, and has apparently simply accepted processor assertions unchallenged.

8.2.2. "Price transparency is not an issue" (P40)

ACCC and others have proven otherwise, but this is not challenged in the interim report in spite of multiple repetitions in the processor document.

Price transparency is clearly an issue, when the net price of chicken meat to the market has risen more than \$2/kg in the last 2 years, but growers have not only had no price rise to cover increased costs, but some have been "offered" contracts at a *lower cost per bird*.

8.2.3 "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 [sic] goods". (P40, repeated in part P41)

This is clearly an untrue statement that has not been challenged by the Report. It is **not necessary** to own the goods to have an economic interest or participate in risk/reward in a supply chain. Around half of the meat poultry supply chain is contracted or "fee for service" (grain, grain carriers, growers, IT support, external accounting, external pathology laboratories, pick-up crews, litter carters, shed cleaners etc).

What Is a Supply Chain?

A supply chain is a network of individuals and companies who are involved in creating a product and delivering it to the consumer. Links on the chain begin with the producers of the raw materials and end when the van delivers the finished product to the end user.

Moreover, growers most certainly participate in the risk of poultry production due to the contracts imposed on them by the processors. These contracts have been described as "draconian" by lawyers in relation to the contracts, given the high specificity of housing and equipment effectively trapping growers. No contract, no business, no farm value.

The interim report makes no comment on this untrue assertion by processors, which is repeated several times.

8.2.4 *“Wholesale and retail price for chicken meat has no relevance to grower fees and returns”.* (P40)

This is patently untrue. If wholesale price is less than the cost of production, then growers are as “at risk” as processors in the long term, due to capture of growers by processors and the huge investment of growers into the industry (in some estimates around 40% of total industry investment, or around \$4.5BN).

8.2.5 The processor commentary in the Interim Report conflates the concept of price transparency in the supply chain with growing fees (P41). This is incorrect. In agreeing with the NFF Report outcome that a mandatory Code is likely to be the most effective method to provide countervailing power short of legislation; growers simply want enforceable rules around negotiation, contracts and a fair return. It is the government and ACCC who have raised the issue of price transparency in perishable agricultural goods supply chains because growers have been consistently hammered while consumer prices rise, and without price transparency it is unclear to the public, government and most industry players which sector is gouging.

8.2.6 The processor asserts that the only way to price transparency in the supply chain is if *“growers open their books”* (P41). This is not truthful. Benchmarking is used in many industries and is an accepted corollary to a Mandatory Code of Practice. WA meat poultry growers already undertake benchmarking and it is being rolled out nationwide – and the processors know this. Practically speaking, growers already “open their books” individually to processor staff, to their banks and financiers. Given that, perhaps the processors might undertake to do the same.

8.2.7 The processor alleges that *“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 stable fees and returns...”* (P42), but conveniently fail to mention the contractual clauses that allow for instant termination of the contract, termination against “inefficient” rating in a corrupted pool system, or that most contract are less than 10 years, or that 10 years is far too short a time period for “tunnel” sheds to be depreciated, etc. None of this is challenged in the Interim Report. For example, depreciation on a greenfield site at the current contract rates would require a contract in excess of 15 years.

8.2.8 *“Growers are also not materially exposed to other general agricultural risks in relation to the livestock such as bush fire, flood, or drought”.* (P42) The processor conveniently fails to mention the meat poultry sheds that were lost in the 2019/2020 bushfires, nor the shortage of water in the WA drought that has resulted the processor requiring growers to buy additional water storage/licensing, nor recent flooding that directly impacted a number of farms. In WA, that has resulted in a “Catch 22” for growers in that they are forced to hold licenses for additional water resources above requirements, but are liable to lose the licence if the over-requirement water is not used; resulting in economic inefficiency, higher costs for growers, and wasted resources.

8.2.9. The processor further notes that *“Where these types of events occur grower returns are not materially affected”* (P42), which is also untrue as growers are affected to exactly the same extent as processors, with building costs and increased input costs associated with additional insurances (as required by the processor) and

repair or replacement of infrastructure. What growers DO NOT have is the ability to pass these increased costs onto their growing fees.

Again, the report fails to analyse or challenge what is clearly either a propaganda statement, or a significant failure to understand their own farming contracts.

8.2.10 The processors allege that [unlike] *“other PAG farmers are exposed to disease and weather risk, feed cost volatility and market supply and demand volatility”* (P42).

This is a convenient partial selection of facts to suit the processor’s argument. Growers ARE exposed to disease in the stock as they are not paid for dead birds and particularly are not paid for abnormal deaths caused by disease or events off-farm. Indeed in Jan 2024 growers had high mortalities over the severe heat waves in January resulting in no payment for dead birds, costs of disposal and poor growth in birds affected but not dead.

Moreover growers may lose fees on live birds due to “poor growth” during the disease process, dropping their performance in the processor’s pool system – a retrospective step down of price after already losing billable birds. Growers have no say over vaccination programs, cannot assess or compare the basic health (and therefore, risk) of groups of hatchlings to those received by others in the pool, and cannot contractually exclude bio-contaminated processor staff (veterinarians, “service” personnel) from simply walking onto their farms. Moreover, growers are unable to make their own arrangements in relation to feed quality – processors change feed mixes without notification, and the \$\$ results – good and bad – are passed directly through to the grower via changes to growth and mortality affecting their pool payment, particularly when other growers are not so affected.

So while meat poultry growers may not be exposed to the exact list alleged by the processor, meat poultry growers take on huge additional risks including pools systems, sudden feed changes affecting growth, processors leaving a geographic area, processor failure to place all the birds contractually required per batch or per annum (in one recent case resulting farm losses in the many tens of thousands of dead birds and hence tens of thousands of dollars), weighbridge dockets that do not match the number of birds allegedly picked up from a farm, and so on. The risks might not be *identical* to other PAG farmers, they are different and in many cases more significant. It’s also worth noting that with few exceptions, other PAG farmers can move to other commodities if risk is deemed too high: this is unavailable to contracted meat poultry growers.

The Interim report has failed to identify or analyse these allegations of the processor – they are essentially presented as fact. *“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”* a mandatory concept to poultry growers.

8.2.11 The processors allege that the industry is *“delivering excellent returns to growers in the context of other PAG farmers”* (P42, 3rd dot).

Again, this is blatantly incorrect. Sadly, it appears that the processor, deliberately or otherwise, is confusing turnover with profitability. When major corporate and family

growers are slowing or ceasing building new shedding in the face of approved DA's, when banks are threatening farm closures, when costs are demonstrably rising and farm investment is huge compared with many other PAG farmers, then these are NOT "excellent returns". Small groups of growers who have had the opportunity (largely due to older shedding) to switch to free range egg production advise their profitability is significantly higher in that sector even though their turnover is lower, resulting in a better net return without the difficulties of dealing with meat poultry processors.

The Interim report simply presents this processor opinion as fact, with no analysis. Growers have indicated that they would welcome such analysis in the context of the first review of a necessary Mandatory Code.

8.2.12 The processors try to make a case that the ACCC has rejected a Code based on the PAG report. (P43) and allege that NFF is arguing for a Code based on "*perceived issues*". This flies in the face of the ACCC being on the Advisory Committee for the *government* project, run by NFF, to look at options for a Code. In addition, NFF has gathered evidence from multiple sources, examined inquiries and presented evidence, something the processor commentary fails to do.

The interim report has failed to address this, nor has it addressed the selective quoting of the PAG report.

8.3 The comments/positions/inaccuracies listed by the processors in the Interim Report, not backed by any fact or examples, in themselves clearly demonstrate the extent of the power imbalance in favour of the processor. This can be somewhat balanced by the adoption of legislation, or in the absence of specific legislation, the adoption of a robust, mandatory Code of Conduct with strong enforcement and data collection via reviews.

9.0 Lack of Engagement (including deliberate undermining) by Processors (and to a lesser extent, Supermarkets)

9.1 With the exception of one company, that processors have *en masse* refused (in spite of repeated requests) to cooperate with the Project demonstrates the arrogance with which they treat government-led investigations and growers in general.

9.2 There has been limited acknowledgement of the recent changes to law in relation to unconscionable contracts. The report does not identify that following the PAG report and ACCC identification that contracts included unconscionable clauses, that processors made minor changes were made to isolated clauses in consultation with ACCC and then other clauses added that were not seen by ACCC, and the amended contracts were presented to groups of growers as "ACCC approved" – resulting in ACCC having to issue a correcting statement.

That contracts remain unconscionable in places, and that growers have found it impossible to challenge this without losing their business, is adequately illustrated in a quote from a lawyer to a grower who was head of his negotiating team (Jan 2024):

“Executive Summary

4. Having reviewed the Contract, it is our advice that your Growers should not sign the Contract in its present form, as the terms of the Contract are draconian and unfairly skewed in favour of the Processor.

5. We further recommend that you instruct us to consider and advise you whether the terms of the Contact come within the ambit of the Unfair Contract Terms provisions of the Australian Consumer Law. “

9.3 In a number of NFF Report Advisory Committee meetings where processors were represented, their delegate simply chose to attack the process or declare that no further action was necessary rather than constructively engaging with the process. While this project was ongoing processors were offering “below cost of production” contracts to growers and engaging in vilification and harassment of growers who were in the negotiating groups, while seeking to single out desperate growers (usually wedged by banks) for signature on individual contracts that *continue* to contain unconscionable provisions.

9.4 It is noted that supermarkets were approached for comment and that they were invited to Advisory Group meetings, but for the most part did not engage at meetings. This is saddening, since they have witnessed the roll-out of both mandatory Codes of Practice (Dairy, Horticulture), and voluntary Codes (Food and Grocery), but they have chosen to support a Mandatory Code of Practice and further discussion with growers.

10.0 Significant Capital Investment Underplayed.

10.1 The interim report identifies the significant capital investment demanded of growers by processors without recompense, but fails to identify the net benefit of this on-farm investment *to processors*, and fails to quantify the net outcomes to growers.

10.2 For example, for at least 25 years processors have been forcing growers to upgrade or rebuild their facilities from

10.2.1 “standard shedding” – usually rammed-earth floored, long, narrow, open sided housing using long side curtains that are raised or lowered to naturally control ventilation and heat. These can be converted to other uses including self-storage, calf rearing, layer pullet growing or with minor modification, free range egg production, but the markets for each of these alternative uses is small, “change of use” permits from Councils are expensive and difficult to obtain, and only a limited number of sheds can be put to other uses,

to

10.2.2 “tunnel shedding” – fully enclosed, concrete-floored, environmentally controlled long narrow closed-sided housing with electrically operated forced-air ventilation and close management of gas-operated heating (particularly in relation to the balance between heating and ventilating gas by-products). It is virtually impossible, and far more cost intensive, to try and convert any of these sheds to other forms of production, thus making the grower a prisoner to meat poultry production.

The benefit to the processor of tunnel sheds is not only that more birds can be placed per batch, which provides no benefit for those growers who are paid on a “per square metre per year” basis).

10.2.3 There is some benefit to growers who are paid on a “per bird” basis if more birds are placed (note: No benefit for those paid on a m2/year basis),

HOWEVER:

- There is a huge cost to conversion/building tunnel shedding which is entirely borne by the grower.
- Not only is there no guarantee that their capital investment will be rewarded with higher payment, but the operation of “pool” systems regularly results in “standard shed” farms being at the top of the pool and therefore paid more, and
- Most contracts have no allowance for recuperation of the capital costs of these upgrades in payment or duration of contract, and
- Because of the dramatically higher cost of “tunnel shed” farms, the necessary depreciation cost is both higher and lasts for longer but contract terms do not reflect this
- “Tunnel sheds” have a significantly higher fossil fuel cost to operate, resulting in higher energy costs for these growers, making it more difficult for growers to institute carbon targets.

In other words, the interim report does not adequately identify that “tunnel shed” farms are particularly vulnerable economically, contractually and regionally.

11.0 Failure to identify that processors not competitively seek highly efficient growers.

There is no competition for highly efficient quality meat poultry growers by processors. This is not fully elucidated in the report, nor the negative economic consequences of this issue analysed. Processors may operate a “pool” on which they reallocate funds based on variables of their own making (different feeds, chicks, etc) and deem a grower to be “efficient” or not with no correction or even acknowledgement of these issues. Therefore, the pool system is simply a form of retrospective price reduction for those growers deemed by the processor to be “inefficient” – which so often includes any grower who takes on a representative role or argues with a processor about a contract. There is NO identification of growers who are actually consistently more efficient than other growers, because processors do not complete for farming services from these growers. While this is noted in the report, what is not noted are the significant negative impacts to the efficiency of the industry and the loss of benefit to growers who, *if all things were equal*, would be allowed to profit from their performance.

12.0 Failure to complete the comparison with other Codes.

From page 135 onward, there is comparison between the proposed Code of Conduct for the meat poultry industry and other Codes, namely Dairy, Horticulture, Food & Grocery, Sugar, Winegrape Purchases and Franchising. Please note that the tablet is incomplete for the Franchising in that a number of the “blank spaces” are actually included in the Franchising Code. Leaving these blank implies that there is a significant difference between this Code and the agricultural code: there is not.

COMMENTS ON THE PROPOSED MANDATORY CODE OF CONDUCT

1. The proposed Code of Conduct is deficient in that it
 - Fails to note the latest payment date after the end of a Pool /Payment adjustment scheme for growers to be paid.
 - Fails to include a clause which gives an individual grower access to all the data on that grower that is held by the processor, including but not limited to
 - Original Weighbridge dockets (to provide protection from inaccurate weighing.
 - Method of calculation of outcome that means the grower will be paid less than the contract fee.
 - Actual birds placed on farm, as compared to stated
 - Notes from service-people and veterinarians about the health and general state of the birds on that grower's farm.
 - Identification of any medications or treatments given to the birds and why.
Note that these elements are included in the new USA laws.
 - Fails to include a clause specifying that a grower has the right to observe the weighing of the live birds produced on that farm. *Note that this element is included in the new USA laws.*

2. In addition, Section 34(a) must be rewritten as thus:

The processor shall not hamper, impede or otherwise delay or stop the transfer of ownership of a farm to a new owner.

As it is currently written, this section provides a convenient loophole for a processor to significantly punish a grower that has annoyed them in the past by developing a "consideration" that a purchaser does not have the resources of capacity to carry out obligations in the agreement.

An alternative might be to require mandatory mediation/arbitration in the event that a processor forms such a "consideration". There is significant potential that a purchase may not proceed, or may only proceed at a significant monetary penalty to the seller, depending on a processor's "consideration".

3. In 43(1) on p120, a conundrum exists in that a "dispute MUST be dealt with or resolved in accordance with the dispute resolution procedure in the agreement, if the party WISHES is to be dealt with in this manner".

While this can be construed correctly, there is significant opportunity the way this this written for misunderstanding, or worse, coercion to ensure that "the party" doesn't "wish". It's as simple as a processor saying to a grower: "say goodbye to your next contract".

The second sentence should be removed.

Other minor issues should be by negotiation.



Charlotte, I trust that this response meets the needs of the report and look forward to discussing it with you prior to the final report being released.

Warm Regards,

(by email)

Joanne Sillince