

# Australian Chicken Growers' Council Limited



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## Submission to Perishable Agricultural Goods Inquiry

The Australian Chicken Growers' Council (ACGC) has already lodged information as part of the ACCC-initiated *Chicken Meat Review*, which commenced in July 2020. That review is now incorporated in the ACCC's *Price Inquiry—Perishable Agricultural Goods*.

ACGC submissions to the Chicken Meat Review remain relevant, but given the specific matters listed in the Treasurer's *Competition and Consumer (Price Inquiry—Perishable Agricultural Goods) Direction 2020*, this supplementary submission is provided.

As previously advised to the ACCC, ACGC considers that the chicken meat industry has a major problem with the exploitation by processor companies of the weaker bargaining position of growers. This is why ACGC is pleased to see that the Perishable Agricultural Goods Inquiry is required by the Treasurer to examine '...relationships between farmers, processors and retailers'.

ACGC has serious concerns about the strategic directions that Australia's major chicken processors have taken over the last several years, particularly since Ingham Enterprises was publicly listed in November 2016. These processors are now entirely focused on shareholder returns, and for reasons outlined below, have found themselves in the position of being able to increase profits by abusing the processor-grower power imbalances that are now common.

This submission outlines ACGC's concerns by addressing the relevant matters of interest listed in the Treasurer's *Competition and Consumer (Price Inquiry—Perishable Agricultural Goods) Direction 2020* (refer red text in boxes below).

### 6 Directions on matters to be taken into consideration in the inquiry

Under subsection 95J(6) of the Act, the Commission is directed to take into consideration all of the following matters in holding the inquiry:

- (a) the relative power held by different suppliers in the markets for the supply of perishable agricultural goods, with particular regard to:
  - (i) the concentration of power in the markets amongst and between suppliers of perishable agricultural goods at each level of the domestic supply chain;

The chicken meat industry is unique within Australian agriculture in that chicken farmers, or 'growers', do not at any stage own the livestock, which belong to the chicken processor companies. The grower provides farms (at considerable capital outlay) and accepts a fee from the processor for husbandry of the birds from one day of age until they reach market weight.

Although growers do not deal directly with supermarkets, they are still subject to the actual or potential misuse of supply chain power concentration, due to the low number of processors in Australia. The Coles-Woolworths duopsony/duopoly is effectively repeated at processor level, with Ingham Enterprises and Baiada Poultry responsible for around 70 percent of Australia's chicken.

This has resulted in a great deal of market power being placed in two sets of hands, and most Australian chicken growers depending upon just two companies for their chicken growing contracts.

In relation to this situation ACGC draws the ACCC's attention to a quite recent Australian paper, titled *The need for strategic food policy in Australia: Governing for a healthy, sustainable, economically viable and resilient food system* (Commission for the Human Future, Policy Report, September 2020)

The paper makes the following observation on food oligopolies in Australia (my underlining):

*All aspects of the food value chain – seeds, agrichemicals, processing, retail and production – are highly concentrated in a few corporations. Coles and Woolworths control around 60 per cent of fresh food and grocery sales. Kirin controls around 80 per cent of Australia's drinking milk. And Weston Foods and Goodman Fielder control around 70-75 per cent of the bread and bakery markets. Further, processing facilities (such as abattoirs, canneries and grain mills), and the majority of genetic resources (such as seed and livestock) are increasingly concentrated among few powerful companies, often multinational. A food system that depends on a few corporate interests creates perverse outcomes, particularly the squeezing of producers and processors' margins. It forces them to prioritise efficiency and output at the expense of healthy and environmentally sustainable practices.*

The paper goes on to make the following recommendation (my underlining):

**Recommendation 4:**

**Support, encourage and protect small food producers, processors and suppliers**

*The Australian Government could systematically support small and family-owned businesses across the food supply chain, jointly led by the Minister for Agriculture, Water and Environment and the Minister for Industry, Science and Technology. Although this activity should be driven at the state level, economic and political imperatives are blocking these reform efforts, similar to urban food production. The current industry and regulatory environment should be reformed to enable these food producers, processors and suppliers to survive and thrive in an exceedingly challenging industry dominated by large corporations. Greater industry protections could be instituted for smaller producers against price-gouging by, and restrictive contracts demanded by, large corporations.*

**6 Directions on matters to be taken into consideration in the inquiry**

Under subsection 95J(6) of the Act, the Commission is directed to take into consideration all of the following matters in holding the inquiry:

- (b) the relative power held by different suppliers in the markets for the supply of perishable agricultural goods, with particular regard to:
  - (ii) the bargaining power of the suppliers in the markets, whether an imbalance in power exists between suppliers at different levels of the domestic supply chain, and whether that imbalance leads to a harmful outcome for participants in the markets (including through the behaviour of suppliers or through the pricing and other terms and conditions suppliers offer to other suppliers);

The processor-grower power imbalance can be linked to the diminishment of processor level competition since 2009, leaving most growers in 2020 with just a single option with regard to processor contracts. Two main factors have been responsible for this erosion of competition:

1. The disappearance of processors.

A number of processors have either gone out of business or been acquired, mostly in the last few years. These include:

- Barrter Steggles (a national processor acquired by Baiada Poultry in 2009)
- Sunnybrand (based at Byron Bay and acquired by Inghams in 2011)
- BA's Meat and Poultry (small NSW processor closed in 2018)
- Red Lea (another NSW processor closed in 2018)

2. The strategic closure of Ingham and Baiada plants, including:

- Aldinga Turkeys (an Inghams plant in SA, closed in 2014)
- Inghams Cardiff NSW plant, closed in 2016
- Inghams Byron Bay NSW plant, ex Sunnybrand, closed in 2017
- Baiada's Laverton Victoria plant, closed in 2017
- Baiada's Ipswich Queensland plant, closed in 2018
- Inghams Cleveland Queensland secondary processing plant, closed in 2018

With this diminishment of processor competition, most Australian growers now live with the anxiety of knowing that they now have no option but to grow chickens for their current processor, and if that company should terminate or fail to renew their contract, the grower could be faced with no income, substantial debt, and greatly devalued assets. Without a contract, bankruptcy is a real prospect for most growers.

Examples of the ways in which processors have exploited or attempted to exploit this situation include:

1. Contracts allowing processors to reduce gross farmer income, through means including the lowering of the husbandry fee, cuts in numbers of birds placed on the farm per batch, or decreases in the number of batches placed over a given time.
2. One national processor uses a contract that allows the substantial forfeiture of payment if a farm is not completely compliant with strict and sometimes petty company standards, even though chicken meat from a penalised farm may still be marketed as premium product.
3. Last year the same processor adopted the policy of offering reduced payments for farms that the company considers should have low or no debt, using the reasoning that 'if you haven't paid your farm off by now, it's not my fault'. This is in spite of many such growers still carrying debt due to the regular shed upgrades that the contract allows the processor to demand. Such a payment reduction policy also ties the grower to his farm, as at the reduced payment rates no potential buyer of the farm could justify borrowing the funds for a purchase.
4. Two years ago when a national processor closed operations in Victoria, growers contracted to another processor (Processor 2) were told that their payments would be immediately reduced by six percent. There was no other reason for this other than that Processor 2 had suddenly gained more power over its growers, due to the disappearance of its competitor processor. Five growers did not accept this reduction and their contracts were terminated. Processor 2 then signed up five of the desperate farms that were stranded when the national company left, at a rate 12 percent below Processor 2's 'normal' rate. This allowed Processor 2 to terminate three more of their higher rate contracts.
5. The same national processor announced that it would close its Queensland processing plant in January 2019, cancelling all 26 grower contracts in South East Queensland. Even though the

grower contracts had been for periods of up to five years, they were written to enable the company to terminate them without penalty with notice of just a few months.

6. As was the case in Victoria, when the Queensland plant closed the remaining national processor in the region was quick to exploit its newfound power, in a market where there were more growers than available contracts.
7. Processors that are contractually obliged to annually review their payments to growers are ignoring this commitment, knowing that growers have nowhere else to find a contract.
8. Contracts with shorter tenure, allowing processors to terminate or renegotiate agreements sooner. Chicken growing is a high capital exercise, with a single fitted-out shed costing around \$1m to build or buy, and an average sized farm having 8 – 12 such sheds. For growers building new sheds or buying existing ones, loan repayment takes around 15 years, and with maximum contracts only extending to 10—12 years for new sheds and 5 – 7 years for existing sheds, paying off a farm and avoiding bankruptcy depends entirely on securing second and third contracts. Knowing this, processors are aware that they are in a very strong position to negotiate such follow-up contracts.
9. Contracts that allow processors to impose extra capital costs on growers, in order that poultry housing can be modified to processor requirements. Such demands are usually not negotiable, and can involve substantial cost. A recent example is the instruction in 2019 for a group of growers to install concrete flooring in their sheds, at a cost of around \$150,000 per shed. Growers that do not comply will violate their contracts, so processors can use this method to prematurely end agreements without penalty to themselves.
10. Contracts that compel growers to accept extra responsibilities at their own expense, such as gaining and maintaining RSPCA Approved Farming accreditation, or Free Range Egg and Poultry Australia certification.
11. Contracts that seek to transfer commercial risk from processors to growers. Recent examples from 2020 are attempts by processors to introduce contract clauses designed to protect processors against future drops in market requirements, such as occurred in March/April due to the COVID-related contraction of food service sector demand. These clauses would have seen the financial risk attached to similar episodes in the future largely transferred to growers, with the contracts enabling the processors to reduce payments to growers by up to 100 percent for an indeterminate period.

#### **6 Directions on matters to be taken into consideration in the inquiry**

Under subsection 95J(6) of the Act, the Commission is directed to take into consideration all of the following matters in holding the inquiry:

- (c) the relative power held by different suppliers in the markets for the supply of perishable agricultural goods, with particular regard to:
  - (iii) the nature of the relationships between the various suppliers in the markets;

With most Australian growers now entirely reliant upon a contract from the sole processor operating in their district, and that processor able to exploit this reliance when setting income for the grower and expenditure to be incurred by the grower, the processor-grower relationship bears similarities to the serfdom systems of feudal Europe in the Middle Ages.

The grower has very little negotiating power and as a result, contracts with growers are increasingly being used as a means of transferring profit to the processor and risk to the grower.

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Under subsection 95J(6) of the Act, the Commission is directed to take into consideration all of the following matters in holding the inquiry:

- (a) the relative power held by different suppliers in the markets for the supply of perishable agricultural goods, with particular regard to:
  - (iv) the allocation of risk between the suppliers in the markets;

Processors use third party contracted farms to raise their birds in order to avoid capital expenditure, as the farms are a major capital cost in the supply chain. Processors used to understand that people who are prepared to build these farms need the security of guaranteed income in order to repay loans that are invariably in the millions of dollars.

Growers are still carrying big debts, but over the past several years processors have varied or attempted to vary contracts so that company losses that are not the fault of growers can nevertheless be transferred to the growers. The best recent example is the attempts by several processors to alter contracts in order to allow them to partly or completely stop paying growers should the processors lose chicken meat markets as a result of 'community disease' (to quote from one proposed contract), such as occurred this year when the food service sector effectively closed for a time as part of state COVID responses. Such action could quickly put many growers into receivership.

ACGC is pleased to see this inquiry taking place and hopes that it results in fair trading terms for all Australian suppliers of perishable goods.

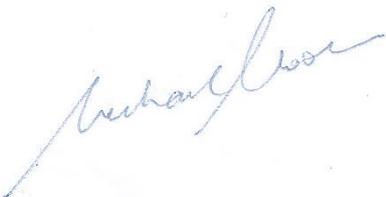
The Australian chicken industry needs every link in its supply chain to be healthy, profitable, and fairly treated, as was the case not that long ago. ACGC considers that a mandatory code of practice governing processor-grower contracting, introduced and enforced by the ACCC, would be a valuable way to start bringing balance and fairness back into the Australian chicken meat industry.

A strengthened *Competition and Consumer Act 2010* could also help prevent abuse of supply chain power by processors. Of particular use would be:

- the bolstering of *Volume 3, Schedule 2, Chapter 2, Part 2 2 - Unconscionable conduct*; and
- The revision of *Volume 3, Schedule 2, Chapter 2, Part 2 3 - Unfair contract terms 23 Unfair terms of consumer contracts and small business contracts* to increase the threshold staff numbers and contract values below which *Part 2-3—Unfair contract terms* applies.

Please do not hesitate to make contact if more information is required.

Sincerely,



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