

Issues Paper

Inquiry into the *Chicken Meat
Industry Act 1977*

25 February 2010

Economic Regulation Authority



WESTERN AUSTRALIA

A full copy of this document is available from the Economic Regulation Authority web site at www.era.wa.gov.au. For further information, contact

Economic Regulation Authority
Perth, Western Australia
Phone: (08) 9213 1900

The copying of this document in whole or in part for non-commercial purposes is permitted provided that appropriate acknowledgement is made of the Economic Regulation Authority and the State of Western Australia. Any other copying of this document is not permitted without the express written consent of the Authority.

Disclaimer

This document has been compiled in good faith by the Economic Regulation Authority (the Authority). This document is not a substitute for legal or technical advice. No person or organisation should act on the basis of any matter contained in this document without obtaining appropriate professional advice.

The Authority and its staff members make no representation or warranty, expressed or implied, as to the accuracy, completeness, reasonableness or reliability of the information contained in this document, and accept no liability, jointly or severally, for any loss or expense of any nature whatsoever (including consequential loss) ("Loss") arising directly or indirectly from any making available of this document, or the inclusion in it or omission from it of any material, or anything done or not done in reliance on it, including in all cases, without limitation, Loss due in whole or part to the negligence of the Authority and its employees. This notice has effect subject to the Trade Practices Act 1974 (Cth) and the Fair Trading Act 1987 (WA), if applicable, and to the fullest extent permitted by law.

The summaries of the legislation, regulations or licence provisions in this document do not contain all material terms of those laws or obligations. No attempt has been made in the summaries, definitions or other material to exhaustively identify and describe the rights, obligations and liabilities of any person under those laws or licence provisions.

Foreword

The Treasurer of the State of Western Australia has requested the Economic Regulation Authority (**Authority**) to undertake an inquiry into the effectiveness of the *Chicken Meat Industry Act 1977 (Act)*.

In accordance with the inquiry's Terms of Reference, the Authority will consider how the Act is currently operating and the issues affecting the chicken meat industry in Western Australia.

The Authority must also consider and develop findings on whether there is a need for legislation to improve stability in the chicken meat industry, or if the Act should be repealed. If there is a need for legislation, consideration must be given to whether the Act in its current form is effective in improving stability or if it should be amended or replaced.

In developing its findings, the Authority must examine the national chicken meat industry and the relative negotiating power of chicken meat growers and chicken meat processors in relation to the terms of contract between them. If any imbalance in negotiating power is found to exist, the Authority must consider whether any intervention is required to redress such an imbalance.

The purposes of this issues paper is to provide background information and outline the issues to be reviewed. It is intended to assist stakeholders to understand the nature of the issues under review and to facilitate public comment and debate. Throughout this issues paper questions that may be of particular interest to stakeholders are raised and are highlighted in boxes.

Submissions on any matters, including those raised in this issues paper, should be submitted by **4:00 pm (WST) on Friday 9 April 2010** to:

publicsubmissions@era.wa.gov.au

or addressed to:

Inquiry into the Chicken Meat Industry Act 1977
Economic Regulation Authority
PO Box 8469
Perth Business Centre
PERTH WA 6849
Fax: (08) 9213 1999

Section 1.4 of this issues paper provides further information regarding the process for making a submission.

Interested parties and stakeholders will have further opportunity to make submissions following the release of the Authority's draft report. The final report for the inquiry is scheduled to be delivered to the Government by 1 November 2010, following which the Government will have 28 days to table the report in Parliament.

I encourage interested parties to consider the Terms of Reference and matters raised in this issues paper and prepare a submission to the inquiry.

LYNDON ROWE
CHAIRMAN

Contents

Foreword	i
List of Tables	iii
List of Figures	iii
1 Introduction	1
1.1 Terms of Reference	1
1.2 Background to the Inquiry	2
1.3 Review Process	2
1.4 How to Make a Submission	3
2 Overview of the Chicken Meat Industry	4
2.1 Introduction	4
2.2 Chicken Meat Production Process	4
2.3 The Chicken Meat Industry in Western Australia	6
2.3.1 Industry Structure	6
2.3.2 Chicken Meat Industry Act 1977	9
2.3.3 Operation of the Act	11
2.3.4 Setting the Price of Chicken Meat	11
2.4 Chicken Meat Industries in Other States	12
2.4.1 New South Wales	12
2.4.2 Victoria	13
2.4.3 Queensland	13
2.4.4 South Australia	14
2.4.5 Tasmania	14
3 Issues for this Inquiry	15
3.1 When is Regulation Necessary?	15
3.2 Issues in the Western Australian Chicken Meat Industry	15
4 Appendix A. Terms of Reference	19
5 Appendix B. Legislation Relevant to Chicken Meat Production in Western Australia	21
6 Appendix C. Glossary	23

List of Tables

Table 2.1	Distribution of Chicken Meat Production by State (2007-08)	6
Table 2.2	Number, Size and Affiliation of Main Chicken Growers in Western Australia	8

List of Figures

Figure 2.1	Process for Production of Chicken Meat in Australia	5
Figure 2.2	Number of Poultry Growing Farms in Australia, by State	8

1 Introduction

The Treasurer of Western Australia gave written notice to the Authority, on 1 February 2010, to undertake an inquiry into the effectiveness of the *Chicken Meat Industry Act 1977* (“**Act**”).

Section 29(4) of the Act requires that the Minister cause the effectiveness of the Act to be reviewed five years after its enactment or continuation. The findings of the review are reported to the Minister, who is obliged not to continue the Act unless he or she is satisfied that continuation is justified.

The Act was last continued on 31 December 2003, and is therefore due to be reviewed after 31 December 2008, with the review to be completed before the end of 2010.

The inquiry has been referred to the Authority under Section 38(1)(a) of the *Economic Regulation Authority Act 2003*, which provides for the Treasurer to refer to the Authority, inquiries on matters related to industries other than those regulated by the Authority (gas, electricity, rail and water).

1.1 Terms of Reference

The Terms of Reference for the inquiry are presented in Appendix A. The Terms of Reference require the Authority to consider and develop findings on:

- how the Act currently operates, including what actions are taken under the Act by chicken meat growers, chicken meat processors and the Chicken Meat Industry Committee;
- the current issues affecting the chicken meat industry in Western Australia, including issues relating to the major processors being based in the eastern states and competition from interstate chicken meat;
- whether there is a need for legislation to improve stability in this industry, which was the object of the Act when enacted, or any other reason, or if the Act should be repealed; and
- if there is a need for legislation, whether the Act in its current form is effective in meeting this need or should be amended or replaced.

The Authority must give consideration to, but will not be limited to:

- an examination of the chicken meat industry nationally;
- an examination of the relative negotiating power of chicken meat growers and chicken meat processors in relation to the terms of contract between them; and
- if any imbalance in negotiating power is found to exist, a consideration of whether any intervention is required or recommended to redress this imbalance.

In undertaking the inquiry, the Authority recognises section 26 of the *Economic Regulation Authority Act 2003*, which requires the Authority to have regard to:

- the need to promote regulatory outcomes that are in the public interest;
- the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;

- the need to encourage investment in relevant markets;
- the legitimate business interests of investors and service providers in relevant markets;
- the need to promote competitive and fair market conduct;
- the need to prevent abuse of monopoly or market power; and
- the need to promote transparent decision making processes that involve public consultation.

1.2 Background to the Inquiry

The *Chicken Meat Industry Act 1977* was enacted to “improve stability in the chicken meat industry”. In this industry, the production and processing of chicken meat is dominated by two large chicken meat processors, who contract out the growing of chickens to individual growers.

The Act replaced the repealed *Chicken Meat Industry Act 1975*, and continued the Chicken Meat Industry Committee (**Committee**), which was established under the 1975 Act. The Committee, which is appointed by the Minister, may, among other things, determine the standard price to be paid by processors to growers, prescribe the form of agreement between processors and growers, and resolve disputes.

Previous reviews of the Act, required under section 29(4) of the Act, have been completed internally by the Department of Agriculture (in 1996 and 2003). A continuation of the Act has effect for a period of seven years.

1.3 Review Process

The recommendations of this inquiry will be informed by the following public consultation process:

- This issues paper invites submissions from stakeholder groups, industry, government and the general community on the matters in the Terms of Reference. Submissions are due by 9 April 2010.
- Following consideration of submissions, the Authority intends to publish a draft report in May 2010. Public submissions on the draft report will then be invited.
- The final report for the inquiry is to be delivered to the Treasurer by 1 November 2010 and the Treasurer will, in accordance with the Act, have 28 days to table the report in parliament.

The Authority will also be consulting with its Consumer Consultative Committee during the course of the inquiry.

In accordance with section 45 of the Act, the Authority will act through the Chairman and members in conducting this inquiry.

1.4 How to Make a Submission

Submissions on any matter raised in this issues paper or in response to any matters in the Terms of Reference should be in both written and electronic form (where possible) and addressed to:

Inquiry into the Chicken Meat Industry Act 1977
Economic Regulation Authority
PO Box 8469
Perth Business Centre
PERTH WA 6849
Email: publicsubmissions@era.wa.gov.au
Fax: (08) 9213 1999

Submissions must be received by **4:00 pm (WST)** on **Friday 9 April 2010**.

Submissions made to the Authority will be treated as in the public domain and placed on the Authority's web site unless confidentiality is claimed. The submission or parts of the submission in relation to which confidentiality is claimed should be clearly marked. Any claim of confidentiality will be dealt with in the same way as is provided for in section 55 of the *Economic Regulation Authority Act 2003*.

The receipt and publication of a submission shall not be taken as indicating that the Authority has knowledge either actual or constructive of the contents of a particular submission and, in particular, where the submission in whole or part contains information of a confidential nature and no duty of confidence will arise for the Authority in these circumstances.

Further information regarding this inquiry can be obtained from:

Dr Ursula Kretzer
Manager Projects
Economic Regulation Authority
Ph (08) 9213 1900

Media enquiries should be directed to:

Ms Sue McKenna
Ms Joanne Fowler
The Communications Branch Pty Ltd
Ph: 61 8 9472 4411
Mb: 0424 196 771 (Sue)
0408 878 817 (Joanne)

2 Overview of the Chicken Meat Industry

2.1 Introduction

Chickens grown for meat production are known as “broiler chickens”.¹ Most stages in the production and processing of chicken meat are undertaken by chicken processing companies, apart from the contracting out of the growing of broiler chickens. The processing companies own and operate breeder farms, hatcheries and processing plants, and in some cases feed mills. The processors provide the feed and medicines required for the broiler chickens. The growers own the sheds in which the chickens are raised and are responsible for growing the chickens.

The key focus in this inquiry is the negotiation of contracts between growers and processors, including whether there are issues that would warrant regulatory intervention, and if so, what approach should be used. In Western Australia, the *Chicken Meat Industry Act 1977* provides a framework for contractual negotiations, including the establishment of an average reference price to growers. In other states, there is no legislated reference price, and in some cases growers have received an authorisation from the Australian Competition and Consumer Commission (**ACCC**) to collectively bargain their contract terms.

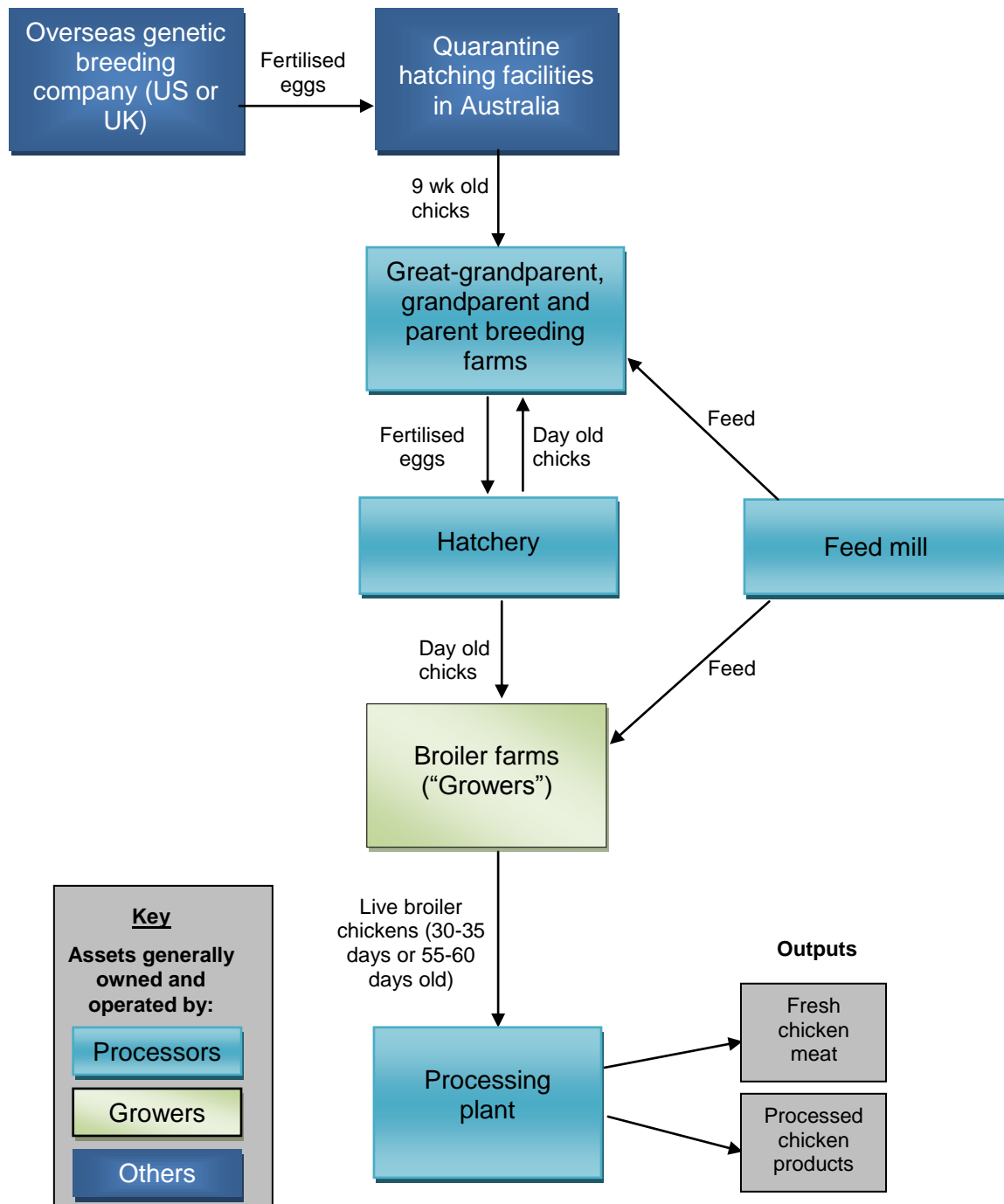
2.2 Chicken Meat Production Process

The conventional process for producing chicken meat in Australia is shown in Figure 2.1 below, and outlined here:

- The original genetic stock for Australian broiler chickens is imported from specialised breeding companies overseas, in the form of fertilised eggs, which are hatched under quarantine conditions to produce the great-grandparent stock for broiler chickens.
- The breeding stock is bred through several generations at specialised breeding farms, from the great-grandparent stock to the parents of the broiler chicks. (In Western Australia, there are no great-grandparent or grandparent breeding farms; fertilised eggs to form the parent birds are imported from the Eastern States.) Fertilised eggs from the parent breeder farms are hatched in separate hatcheries, and day-old chicks are transferred directly to the broiler farm (or grower).
- Broiler chicks are grown in sheds that generally house around 40,000 birds. A typical grower may have between three and eight sheds. The broiler chickens are grown under controlled temperature and feed conditions. Some are culled at 30-35 days old and the remainder at 55-60 days old.
- The chickens are transferred live to a processing plant, where they are slaughtered and processed into chicken meat. The meat may be sold to retailers or fast food companies, or may be further processed into chicken meat products.

¹ The Act defines a broiler chicken as “a chicken which is being or has been grown under intensive housing conditions specifically for consumption as meat after processing”. The chicken meat industry is a separate industry from the chicken egg industry, as the chickens grown for meat production are from a different genetic stock to those used for egg production. As a result of selective breeding, chickens used for meat production are fast growing, whereas chickens used for egg production are bred for egg quality rather than growth rate.

Figure 2.1 Process for Production of Chicken Meat in Australia



Growers need to be located reasonably close to processing plants (ideally within one or two hours drive) as transporting live chickens over long distances increases the stress, injury rate and mortality rate of the birds.

Some growers produce free range chickens or certified organic chickens, which have access to an outdoor forage area once they are 21 days old (10 days old for certified organic chickens). Around four per cent of chicken meat produced in Australia is free range, and around half of this is certified organic. Target stocking densities are lower than

for conventional meat chickens.² Birds that have been treated with antibiotics cannot be sold as free range or certified organic. For certified organic chickens, feed must come from certified organic production and the use of genetically modified products in feed is not permitted.

2.3 The Chicken Meat Industry in Western Australia

2.3.1 Industry Structure

The chicken meat industry in Australia has grown from a production of around 3 million broiler chicks in 1950 to 475 million in 2008-09. Per capita consumption of poultry meat has also increased substantially over the past four decades, from an annual consumption of around 8 kg per person in 1969 to 38 kg in 2006.³ Western Australian production of chicken meat is around nine per cent of the total national production (see Table 2.1).

Table 2.1 Distribution of Chicken Meat Production by State (2007-08)

	NSW	Vic	Qld	SA	WA	Tas	Total
Percentage of Total Slaughtering	34.3	27.9	18.3	9.1	9.0	1.4	441.6 million chickens
Percentage of Total Chicken Meat Produced	34.9	28.8	17.0	9.3	8.7	1.3	731,471 tonnes

Source: Australian Chicken Meat Federation Inc.

The structure of the chicken meat industry in Western Australia is similar to that in other states across Australia, with a small number of processors responsible for most stages of the production of chicken meat, apart from the contracting out of broiler growing to individual growers. This structure of the chicken meat processing industry in Australia first emerged in the 1960s, and was based on a successful chicken meat company model that originated in the United States.⁴ While processors do own some broiler farms, a consultant's report to the NSW Farmers Association in 2001 states that:

Processors prefer contract growing because it frees up working capital for marketing and business growth rather than locking funds into farm asset infrastructure....Growers contribute approximately 40 percent of the capital investments in the industry through ownership of farms, shedding and other facilities used in the growing of chickens.⁵

Another reason cited for the involvement of processors in most stages of chicken meat production is that it is important for processors to have control over the costs and timing of all operations in the supply chain.⁶

² Maximum stocking densities are 28-40 kg/m² for conventional chicken meat, 16-32 kg/m² for free range chicken meat, and 25 kg/m² for certified organic. Source: Australian Chicken Meat Federation Inc.

³ Victorian Department of Primary Industries web site. Chicken accounts for 95 per cent of poultry meat sales.

⁴ Source: Australian Chicken Meat Federation Inc.

⁵ The Allen Consulting Group, 2001, *A Structural Adjustment Package for the NSW Poultry Meat Growing Sector*, p2.

⁶ ACCC (19 May 2004), *Determination: Application for Revocation of A90659 and its Substitution by A90888*, Inghams Enterprises Pty Ltd on its own behalf and on behalf of Tasmanian chicken growers, in relation to the collective negotiation of chicken growers' contracts in Tasmania, para.2.9.

Processors

The processing of chicken meat in Australia is dominated by two major companies, Baiada Poultry and Inghams Enterprises, who process around 80 per cent of the chicken meat produced in Australia. In February 2009, the ACCC allowed the acquisition by Baiada of Bartter, the third-largest of the national chicken meat processors, following an undertaking by Baiada to divest some of its assets to La Ionic Poultry in Victoria. The processors own most of the assets in the production process, including parent breeder farms, hatcheries, feed mills, processing plants, and some broiler farms. In Western Australia, over 90 per cent of the total shed area for broiler chickens is owned by growers producing chickens for Baiada and Inghams.

Inghams

Inghams is the largest producer of chicken meat in Australia, and in Western Australia. Its processing factory is in Osborne Park, Perth, and it produces its own feed at its feed mill in Wanneroo. Inghams also has its own broiler farm, in addition to 17 contract growers. It owns a hatchery and nine parent breeder farms. Inghams also imports some fresh chicken meat into Western Australia from its processing plant in South Australia.

In the eastern States, Inghams owns another nine primary processing plants and six further processing plants, breeder farms and nine feed mills.

Baiada Poultry

Baiada Poultry is the second largest producer of chicken meat in Australia. Its products include the Steggles brand of chicken products, previously owned by Bartter. Baiada has 14 growers, a processing factory in Osborne Park, buys its feed from Wesfarmers, and owns two hatcheries and six parent breeder farms. As with Inghams, Baiada imports some fresh chicken meat into Western Australia.

In the eastern states, Baiada also owns and operates feed mills (one in NSW), processing factories (Queensland, Victoria and three in NSW), breeding farms, hatcheries and protein recovery facilities.

Other WA processors

Finesse Foods (Australia) Pty Ltd is located in Bunbury and was incorporated in 1988. It produces raw and deboned chicken and chicken products, including the Ferguson Valley Country Chickens range.

Mt Barker Chickens has a processing facility and five growers in Mt Barker. Its feed is produced by Milne Feeds, Welshpool.

There are a number of small processors who buy chickens from the large processors for further processing.

Growers

Most growers in Western Australia are on contracts with either Inghams or Baiada (see Table 2.2). The chicken meat growers affiliated with the different processors are located in different areas to reduce biosecurity hazards. Inghams' contract growers are located north of Perth while Baiada's contract growers are located south of Perth. Three Baiada growers recently switched processors to Finesse.

Table 2.2 Number, Size and Affiliation of Main Chicken Growers in Western Australia

Grower Affiliation	Number of growers	Total Registered Shed Area (m ²)
Inghams contract growers	17	182,770
Inghams company farms	2	18,190
Baiada contract growers*	13	131,694
Finesse Foods	5	36,187
Mt Barker Chickens	5	n/a **

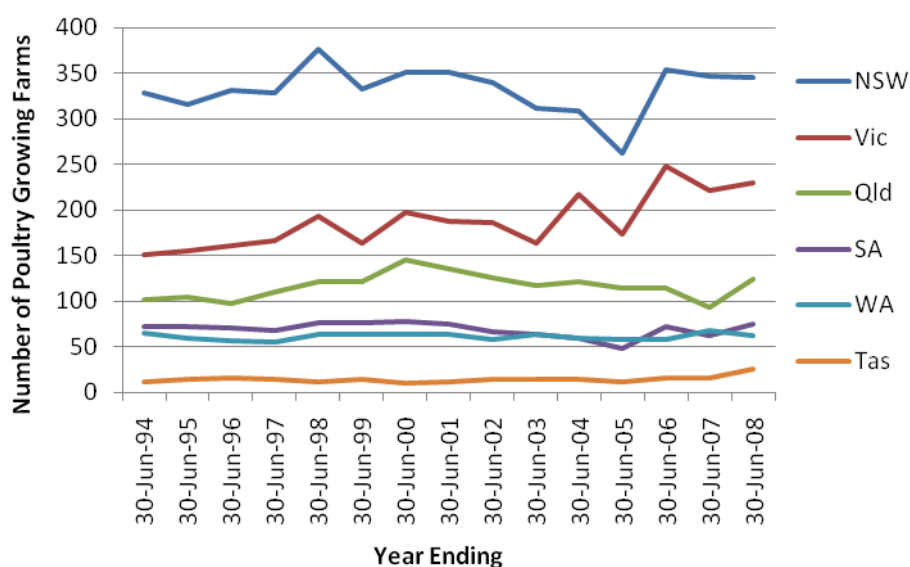
Source: *Western Australian Broiler Growers Association (January 2010), Cost of Production Model*

Notes:

* One other grower is on a private contract with Baiada – shed area not available to WA Broiler Growers Association.

** Mt Barker Chickens growers are on a private contract with their processor – shed area not available to WA Broiler Growers Association

The number of growing farms in Western Australia has remained fairly stable over the past 15 years, varying between 55 and 65.

Figure 2.3 Number of Poultry Growing Farms in Australia, by State

Source: *Australian Bureau of Statistics*

Chicken meat growers do not require licences, but are required to have their growing premises approved by the Chicken Meat Industry Committee under the *Chicken Meat Industry Act 1977* (see section 2.3.2 below). In addition, there is a range of legislation relating to the commercial production of chicken meat and eggs with which producers must comply (see Appendix B).

Retail Market

A further consideration is the retail market for chicken meat. Chicken meat may be sold fresh or further processed into frozen foods. The ACCC inquiry into grocery pricing in 2008 found that the two major supermarkets, Coles and Woolworths, account for around

half the retail sales of fresh poultry (Woolworths around 30 per cent and Coles around 20 per cent), and independent retailers around 12 per cent.⁷ In Western Australia, the independent retailers are the IGA stores, which are mostly supplied by a single national wholesaler, Metcash. Action, Dewsons and Supa Valu stores have recently joined the alliance with IGA.

Other retailers of fresh chicken meat include butchers (around 18 per cent of sales), fast food stores (around 12 per cent), restaurants, catering services, and institutions (e.g. hospitals, aged care homes).

The ACCC inquiry found that the major supermarkets, as the largest buyers, are able to exert some buyer power on processors.⁸ The supermarkets typically source their supplies through an annual competitive tender process, and will switch between processors to secure the lowest price. Thus, there is potentially a high degree of competition between processors to secure supply contracts with the major buyers.

A further consideration is how sensitive the demand for chicken is to the retail price, and the price of other meats, such as pork, beef and lamb, that may be substitutes for chicken meat. Studies suggest that the demand for chicken is less sensitive than other meats to changes in its own retail price and changes in the price of other meats.⁹ The Authority will be further examining the extent to which other meats are viewed by consumers as substitutes for chicken.

2.3.2 *Chicken Meat Industry Act 1977*

The *Chicken Meat Industry Act 1977* was enacted to:

...improve stability in the chicken meat industry, to repeal the *Chicken Meat Industry Committee Act 1975*, to provide for the continuation of the Chicken Meat Industry Committee, and for incidental and other purposes.¹⁰

Growers have indicated to the Authority that one of the drivers for introducing the Act was that growers needed sufficient assurance of returns on their investments in order to obtain finance from banks. Another perceived problem at the time was that too many chicken growing sheds were being built, at the request of the processors, which was not financially viable for the chicken meat growers. The Act required that any new shedding be approved by the Chicken Meat Industry Committee.

The Committee, as defined by the Act, is appointed by the Minister and comprises an independent chairperson, two representatives each of chicken meat processors and chicken growers, and an additional two independent members. The Committee meets twice a year, and its functions are to:

- determine the standard price to be paid by processors to growers for broiler chickens;
- resolve disputes between processors and growers;

⁷ ACCC (2008), *Inquiry into the Competitiveness of Retail Prices for Standard Groceries: Final Report*, p54.

⁸ *Op.cit.*, p244.

⁹ Griffiths, G. *et.al* (2001), "Previous demand elasticity estimates for Australian meat products", *Economic Research Report No. 5*, NSW Agriculture. The survey of demand elasticity studies showed that a one per cent increase in the price of chicken results in a 0.3 per cent drop in demand, while a one per cent increase in the price of beef, pork and lamb results in drops in demand of 1.2 per cent, 1 per cent and 1.4 per cent respectively. However, there has been a downward trend in all own-price elasticities over the past two decades.

¹⁰ *Chicken Meat Industry Act 1977*, p1.

- set criteria to define an “efficient grower”, which is used as a condition for the entitlements of growers under the prescribed form of agreement between processors;¹¹
- approve facilities for the growing of broiler chickens, and maintain records of these facilities;
- report to the Minister on any matters relating to the chicken meat industry that it considers relevant; and
- make recommendations to the Minister on regulations relating to the Act.

The *Chicken Meat Industry Act Regulations* set out the prescribed form of agreement between processors and growers, as well as the methodology for determining the standard price to be paid by processors to growers.

Other regulations, the *Chicken Meat Industry Act (Participation in Growth Expansion) Regulations 1978*, set out rules and procedures for how any increase in output by a processor should be shared between growers contracted to the processor. The purpose of these provisions is to ensure that all growers in the pool have the same opportunity for expansion, and that grower farms in which processors have an interest are not favoured by the processor when an increase in output is required.¹² The regulations also include procedures for resolving disputes related to the participation of individual growers in output expansion.

According to the Department of Agriculture, free range producers may not be subject to the Act with regard to prescribed agreements or the approval of growing facilities, as these parts of the Act are based on the definition of broiler chickens as those raised under intensive housing conditions.¹³ This matter is unclear, as there is no definition in the Act of “intensive housing conditions”, and all commercial meat chickens, whether free range or shed reared, are kept in sheds for the first three weeks of their lives. The Authority would be interested in the views of free range chicken growers and processors as to the applicability of the Act to their operations.

The Authority understands that regulations may be made under the Act, including regulations regarding environmental, health and animal welfare matters relating to the growing of chickens.¹⁴ The Authority would like to establish whether the Act is necessary for the implementation of such regulations or whether these concerns are, or could be, addressed through other legislative instruments (see Appendix B).

National Competition Policy Review (1997)

In 1997, the Act was reviewed for its compliance with National Competition Policy (**NCP**). This review recommended several reforms to the legislation, to:

- allow the development of individual bargaining between growers and processors;
- retain collective bargaining, but move away from bargaining at the industry level (between all processors and all growers) to bargaining at the company level (between each processor and its growers); and

¹¹ In defining the criteria for efficient growers, the Committee is required to take into account factors such as the productivity of growers, the standard price paid to growers, and the market for chicken meat.

¹² The processor, when seeking to expand output, is required to maintain a constant ratio of shed area between private growers in the pool and growers in which the processor has an interest.

¹³ Department of Agriculture Western Australia (December 2003), *Review of the Chicken Meat Industry Act 1977*, p5.

¹⁴ *Chicken Meat Industry Act 1977*, sections 24(1) and 24(2).

- allow individual growers to opt out of collective bargaining if they wish to do so.

One grower for Baiada and the growers for Mt Barker Chickens have opted out of the Act and are subject to private contracts with their processors.

2003 Review of the Act

The Act was last reviewed in 2003 by the Department of Agriculture. This review of the Act coincided with the drafting of amendments to the Act that were recommended in the NCP legislation review. In the review of the Act, it was concluded that the NCP amendments would generally improve the regulation of the chicken meat industry, as it would implement competition reforms while keeping features of collective bargaining. A further conclusion in the review was that these amendments, which were implemented through the *Acts Amendment and Repeal (Competition Policy) Act 2003*, also addressed most of the concerns raised in the submissions made by stakeholders in response to the review.¹⁵

2.3.3 Operation of the Act

The Chicken Meat Industry Committee meets at least twice a year, primarily to update the cost estimates in the cost of production model used to calculate the gazetted average price. The cost of production model is developed and updated in consultation with growers and processors, and is available to all industry parties. Thus, there is transparency about the costs of growing broiler chickens and the method for determining the average price. There is less transparency about the contracts between growers and processors, which may use the average price as the starting point for negotiations, but then further adjust individual growing fees to take into account factors such as the productivity of the individual grower and the price of imported chicken meat.

There have been no formal appeals to the Chicken Meat Industry Committee, although the Committee has been involved in resolving some informal disputes. One view expressed by growers is that parties prefer to avoid arbitration and appeal through the Committee, due to the time and cost involved, and that the presence of the Act may therefore facilitate contractual negotiations, as the parties seek to reach agreement outside the dispute resolution processes under the Act.

2.3.4 Setting the Price of Chicken Meat

Section 16(1) of the Act provides for the Committee to determine the average price to be paid by processors to growers for broiler chickens, which must be published in the *Government Gazette*. The current average price, which is determined using a model of production costs for a notional broiler farm, is 69.74 cents per bird.¹⁶

It is understood that the gazetted average price is used as a reference price by growers and processors in the negotiation of contracts. The growers are paid the average price, adjusted by a productivity factor. More efficient growers (with birds that are heavier than the average batch weight, taking into account their age and feed conversion ratio) will be paid more than less efficient growers (with birds that weigh less than the average batch weight, taking into account their age and feed conversion ratio).¹⁷

¹⁵ Department of Agriculture Western Australia (December 2003), *ibid*, p3.

¹⁶ *Government Gazette*, 30 June 2009, p2626.

¹⁷ The feed conversion ratio is the mass of food consumed divided by the mass of meat produced, which is determined genetically and by the type of feed mix used.

Issues for this Inquiry

- 1) What aspects of the chicken meat production industry in Western Australia are relevant to this inquiry?
- 2) What factors have contributed to the current structure of the chicken meat industry in Australia?
- 3) How is the *Chicken Meat Industry Act 1977* currently being used?
- 4) Are free range chicken producers subject to the Act?
- 5) Is the Act necessary for the implementation of particular regulations (e.g. environmental, health and animal welfare) or could these issues be addressed through other forms of regulation?
- 6) What impact has the Act had on the contractual arrangements between processors and growers?

2.4 Chicken Meat Industries in Other States

Other states (NSW, South Australia, Victoria and Queensland) also have acts related to their chicken meat industries, although it appears that industry participants have had little recourse to the various acts in recent years. Unlike the Western Australian Act, these acts do not provide for the determination of an average fee that is paid to growers. Instead, growers in several states have established collective bargaining arrangements, in which a local group of growers contracted to one processor negotiates the terms and conditions of their grower contracts on a collective basis.

Proposed collective bargaining arrangements between chicken growers must be notified to the ACCC, which will not object to the proposed arrangements if it is satisfied that the public benefits that would result from the collective bargaining would outweigh any public detriments due to the anti-competitiveness of collective bargaining. An ACCC authorisation to a group of growers is valid for a specified period, after which any proposed continuation of the arrangements would again need to be notified to the ACCC. No collective bargaining authorisation arrangements exist in Western Australia.

2.4.1 New South Wales

In NSW, the *Poultry Meat Industry Act 1986* is the relevant legislation. This Act constitutes the Poultry Meat Industry Committee and defines its functions and regulates and controls the poultry growing industry.

In accordance with the Act, the NSW Poultry Meat Industry Committee prepares a code of practice for the conduct of negotiations between processors and contract growers and guidelines for the drawing up of agreements between processors and growers.

The purpose of the code is to assist in the negotiation process to ensure that it is conducted in an orderly manner that is fair and reasonable to both parties. The code

provides for negotiations between a processor and a grower group or a processor and individual growers.¹⁸

The guidelines, which are not mandatory, are provided to assist in the orderly development of agreements between processors and growers.

A review of the NSW Act has recently been undertaken. The recommendations of this review, which are not yet available to the public, were provided to the Minister for Agriculture in early 2010.

2.4.2 Victoria

In Victoria, the *Broiler Chicken Industry Act 1978* is the relevant legislation, although a National Competition Policy review in 1999 recommended that it be repealed, on the grounds that it could be in breach of the *Trade Practices Act 1974* anti-competitive provisions.

The *Broiler Chicken Industry Act 1978* establishes the Victorian Industry Negotiating Committee, the role of which is to facilitate agreements between processors and growers, resolve disputes, and recommend contract terms and conditions. However, the committee is no longer in operation, and some growers in Victoria have in recent years made notifications to the ACCC for authorisation to enter into collective bargaining agreements with processors.

The ACCC has allowed collective bargaining arrangements between chicken grower members of the Victorian Farmers Federation and their processors.¹⁹ The ACCC also authorised the use of collective boycott by the growers in particular circumstances, such as a breakdown in negotiations. However, the Australian Competition Tribunal later reviewed this decision and denied authorisation for the Victorian Farmer Federation's collective boycott arrangements, because of concerns about the detrimental impacts of such boycotts.²⁰

2.4.3 Queensland

The *Chicken Meat Industry Committee Act 1976* (amended in 2004) establishes the Queensland Chicken Meat Industry Committee. Members of the Committee are appointed by the Minister and comprise equal numbers of representatives of growers and processors and an independent chairperson. The committee facilitates negotiations between growers and processors, refers disputes between growers and processors to mediation or arbitration (mediators and arbitrators may be appointed by the committee's chairperson), and makes recommendations about minimum conditions of agreements. However, the committee may not make recommendations on the growing fee or how the growing fee should be determined. The committee also represents, and provides information to, growers and processors on issues affecting the industry. All agreements between growers and processors must be registered with the committee.

In March 2009, an independent review of Queensland's boards, committees and statutory authorities recommended that the Queensland Chicken Meat Industry Committee be

¹⁸ NSW Poultry Meat Industry, 2008, *Code of Practice for the Conduct of Negotiations between Processors and Contract Growers*, p2.

¹⁹ ACCC (March 2005), *Bartter Enterprises Pty Ltd and others - Application for Authorisation A90901 to A90905*.

²⁰ Australian Competition Tribunal (21 April 2006), *Re Re VFF Chicken Meat Growers* Boycott Authorisation [2006] ACompT 2*.

abolished.²¹ The Queensland Government supported this recommendation and proposes to transition the committee from a government body to an industry-run committee following a review of the *Chicken Meat Industry Committee Act 1976*.²² This review is expected to be carried out in early 2010.

2.4.4 South Australia

In South Australia, the *Chicken Meat Industry Act 2003* establishes the contractual relationship between growers and processors and regulates the chicken meat industry. This industry has been regulated by legislation since 1969, when the *Poultry Processing Act 1969* was introduced to control entry into the industry and the subsequent conduct of industry members. A number of amendments were made to the legislation over the years, eventually resulting in the introduction of the current *Chicken Meat Industry Act 2003*.

A review of the *Chicken Meat Industry Act 2003* was undertaken in 2009, in accordance with section 36(1) of that Act, to report on the operation of the Act and to identify whether according to the industry's key stakeholders, the Act is achieving what it was intended to achieve. The review concluded that:

It is evident that the Act is generally not resorted to by either the Growers or the Processors. Whether it should be renewed or left to expire depends on whether the Industry is capable of complete self-regulation and whether other bodies within the Industry and mechanisms of dispute resolution are able to provide sufficient support to the Industry.²³

The ACCC has allowed collective bargaining arrangements between South Australian chicken growers and Inghams.²⁴

2.4.5 Tasmania

Tasmania has no chicken meat industry act. In 2004, the ACCC gave authorisation to Inghams and its seven growers, to continue with arrangements in which the growers negotiate on a collective basis.²⁵ This authorisation is due to expire in May 2010.

²¹ Professor P. Weller and S. Webbe (March 2009), *Brokering Balance: A Public Interest Map for Queensland Government Bodies. An Independent Review of Queensland Government Boards, Committees and Statutory Authorities. Part B Report*, Recommendation 59, pp94-95.

²² Queensland Government response to Part B Report, *op.cit.*

²³ Department of Primary Industries and Resources SA, Government of South Australia, 2009, *Chicken Meat Industry Act 2003 Review of Operation*, p14.

²⁴ ACCC (March 2005), *Bartter Enterprises Pty Ltd and others - Application for Authorisation A90901 to A90905*.

²⁵ ACCC (19 May 2004), *Determination: Application for Revocation of A90659 and its Substitution by A90888*, Inghams Enterprises Pty Ltd on its own behalf and on behalf of Tasmanian chicken growers, in relation to the collective negotiation of chicken growers' contracts in Tasmania,

3 Issues for this Inquiry

3.1 When is Regulation Necessary?

Regulation of a market, such as through legislation, is not necessary, and indeed can be counter-productive, in a market where there is full or effective competition. The characteristics of a competitive market are that there are a large number of buyers and sellers, it is easy for buyers and sellers to enter and exit, the products are relatively homogenous and the quality and price of the products are known. In a competitive market, goods and services are produced at least cost.

However, where a market does not work, or performs poorly, regulation is one way of improving on the outcomes of the market, to ensure that goods and services are being provided efficiently. Lack of competition in a market may arise where there are economies of scale or scope, so that goods or services are most cost-effectively provided by one firm (monopoly) or only a few firms (oligopoly). There may also be other barriers to entry for new participants, or constraints on existing participants seeking to expand their businesses. The absence of competitive pressure can allow firms to produce fewer goods at lower quality and higher prices. On the other hand, the threat of potential competition acts as an incentive to producers to provide high quality goods and services to consumers at least cost.

It is important to ensure that the benefits of regulation exceed the costs, including any unintended consequences that could arise. For example, regulation that discourages new entrants into a market could result in retail prices that are higher than under fully competitive conditions (a cost to consumers).

It is also important that the establishment of a regulatory regime does not interfere with free trade between the states. The terms of reference require the Authority to examine issues relating to the major processors being based in the eastern states and competition from interstate chicken meat. However, it would be anti-constitutional for state-based legislation to in any way restrict such competitive imports, in order to protect Western Australian chicken farmers. Any consideration of this issue, therefore, would be part of a general consideration of the factors that impact on the contractual negotiations between processors and growers. These are discussed in the following section.

3.2 Issues in the Western Australian Chicken Meat Industry

The issues for this inquiry are whether there are market failures in the chicken meat production industry in Western Australia that could warrant regulation, through the *Chicken Meat Industry Act 1977* or some other mechanism. The costs, benefits and possible unintended consequences of any regulation would need to be taken into account.

The key difference between Western Australia and other states is the role of the Chicken Meat Industry Committee in setting a reference price for growers, based on a model of the costs of growing broiler chickens, which can be used as a starting point for contractual negotiations between growers and processors. In other states, there is no such reference price, and some growers have instead made use of federal legislation, the *Trade Practices Act 1974*, to enter into collective bargaining arrangements in their negotiations with their processors.

Collective bargaining can raise concerns under the competition provisions of the *Trade Practices Act 1974*. Reduced competition between growers that are part of a collective agreement can lead to inefficiency and higher prices. Further, new entrants who are not part of the collective arrangements may find it more difficult to enter into or compete in the market. Therefore, the ACCC applies a public benefit test and will only authorise particular collective bargaining arrangements if it determines that there are public benefits to those arrangements which outweigh any potential detrimental impacts.

The ACCC authorisations provided to chicken growers are all related to the imbalance in bargaining powers between growers and processors, arising from the small number of processors to which growers are able to provide their services. In its determinations, the ACCC has considered that collective bargaining can in some cases:²⁶

- strengthen the bargaining power of growers in situations where the balance of power lies with the processor;
- reduce transaction costs, as processors need to negotiate only with the collective rather than with individual growers;
- improve the information available to growers regarding market conditions and costs, and reduce any informational asymmetry between growers and producers;
- improve stability in the market for grower services, if growers have greater input into the terms and conditions of their contract; and
- improve efficiency, as growers are better able to compare their performance with other growers.

The ACCC has also noted that some factors can limit the extent to which collective arrangements could have detrimental impacts. These include situations where the negotiating power of the processors is unlikely to be substantially impacted by collective bargaining, for example, where processors are able to source alternative supplies of chicken meat from their operations in other regions, or where growers have limited ability to switch to other processors.

The small number of processors in Western Australia (as in other states) may be due to barriers to entry and expansion inherent to the chicken meat industry. That is, it may be difficult for new processors to enter into the chicken processing industry, or for existing small processors to expand their operations.

- Large buyers of chicken meat, such as national supermarkets and national fast food companies, may prefer to deal with national processors.²⁷ Large processors are likely to be better able to meet the requirements of the large buyers, including the supply of high volumes of chicken meat, produced to the quality and production specifications of the buyers.
- The high capital costs involved in building processing plants, and the control that processors have over the costs and timing of the different parts of their supply chain, could present barriers to entry for new processors.
- There are likely to be economies of scale associated with larger processing plants, so that unit production costs would be lower for larger processors than for smaller processors.

²⁶ See, for example, ACCC (26 March 2009), *Decision in Respect of a Collective Bargaining Notification Lodged by the South Australian Farmers Federation on Behalf of Eighteen South Australian Chicken Growers*. (First authorised in March 2002.)

²⁷ The preference of large retailers for dealing with national processors was noted by the ACCC in its inquiry into the takeover of Bartter by Baiada.

The small number of processors, and other factors, could strengthen the negotiating position of processors relative to growers.

- The small number of processors in Western Australia means that growers have few alternative sellers for their services. However, it is possible for growers to switch processors (as in the case of the Baiada growers now producing for Finesse Foods).
- The need for growers to be relatively close to processing facilities may also limit the scope for growers to switch to alternative processors. However, since both the major processors have their processing plants in Osborne Park, the distance to processors may not be an issue for most of the growers in WA.
- Growers, once they have invested in the infrastructure required to grow broiler chickens, cannot easily switch that capital to an alternative use.
- Processors have alternative supplies of chicken meat from interstate. In the event of a failure to agree a contract with a grower, processors could still meet their buyers' demands by substituting chicken meat from their operations in other states.

Processors would have an incentive to achieve reductions in growing costs, for their own profit margins, and due to competition between processors to supply the large buyers (major supermarkets and fast food companies). An imbalance in negotiating powers in favour of the processors could potentially have negative impacts on growers.

- Processors would be able to secure contract terms and conditions that do not allow growers to recover the costs of their investments, including a reasonable rate of return.
- Growers may not be provided with sufficient security that they will be able to recover their costs over the long term.
- Processors could compel growers to invest additional capital (e.g. new tunnel sheds). However, this would not be a problem if growers could be assured that their costs would be recovered, including a reasonable rate of return on any new capital investments.

Some factors, however, may limit the bargaining power of the processors. It would be in the interests of processors to have a stable and sustainable growing sector. The risk of failing to meet their supply requirements should provide an incentive for processors to agree contract terms with growers that are mutually beneficial.

- The loss of production from a grower (due to a failure to reach a contractual agreement) may be difficult to replace through expansion by other growers, which may be constrained by the need for additional capital investment, or the need to meet other regulatory requirements in order to expand broiler growing operations (see Appendix B). Further, it may not always be possible to increase the volume of imported chicken to meet supply shortfalls.
- Processors who would like to expand production by their growers would need to offer contract terms and conditions that give the growers (and their financiers) sufficient confidence to invest in new sheds.

In considering the operation of the *Chicken Meat Industry Act 1977*, and any alternative regulatory regime, the Authority will need to assess any possible unintended consequences of regulation. These may include higher prices for consumers than would prevail in the absence of regulation, due to barriers to entry or exit, or reduced price

competition. Other costs of regulation include administrative costs, such as the costs of appeals, or ACCC authorisations in the case of a federal approach.

Issues for this Inquiry

- 7) Are there any market failures in the production of chicken meat in Western Australia?
- 8) What factors influence the relative negotiating power between chicken meat processors and growers?
- 9) Has regulation of the chicken meat industry produced any unintended consequences?
- 10) Is regulation, or some other intervention, needed to address any market failures?

4 Appendix A. Terms of Reference

INQUIRY INTO THE CHICKEN MEAT INDUSTRY ACT 1977

TERMS OF REFERENCE

I, TROY BUSWELL, Treasurer, pursuant to Section 38(1)(a) of the *Economic Regulation Authority Act 2003* request that the Economic Regulation Authority (the Authority) undertake an inquiry into the effectiveness of the *Chicken Meat Industry Act 1977* for the purpose of fulfilling the requirements of section 29(4) of that Act.

The *Chicken Meat Industry Act 1977* provides for the termination of the Act unless the Minister publishes a notice continuing it for 7 years from the date it would otherwise have expired.

Before the Minister publishes such a notice section 29(4) of the Act requires that he or she cause an investigation and review to be conducted and a report to be prepared. The Act is not to be further continued unless the Minister is satisfied, after considering the report, that the continuation is justified in the circumstances. The investigation and review is to be carried out when 5 of the 7 years of continued operation have elapsed.

The Act has been continued pursuant to these provisions since 1989 and most recently for a period of 7 years succeeding 31 December 2003, that is, until 31 December 2010.

Consequently the Act became due for its next investigation and review after 31 December 2008 and the review must be completed before the end of 2010.

In conducting the inquiry, the Authority is expected to consider and develop findings on:

- How the Act currently operates, including what actions are taken under the Act by chicken meat growers, chicken meat processors and the Chicken Meat Industry Committee;
- The current issues affecting the chicken meat industry in Western Australia, including issues relating to the major processors being based in the eastern states and competition from interstate chicken meat;
- Whether there is a need for legislation to improve stability in this industry, which was the object of the Act when enacted, or any other reason, or if the Act should be repealed;
- If there is a need for legislation, whether the Act in its current form is effective in meeting this need or should be amended or replaced.

The Authority must give consideration to, but will not be limited to:

- An examination of the chicken meat industry nationally;
- An examination of the relative negotiating power of chicken meat growers and chicken meat processors in relation to the terms of contract between them;
- If any imbalance in negotiating power is found to exist, a consideration of whether any intervention is required or recommended to redress this imbalance.

The Authority will release an issues paper as soon as possible after receiving the reference. The paper is to facilitate public consultation on the basis of invitations for

written submissions from industry, government and all other stakeholder groups, including the general community.

A report providing a draft analysis is to be available for further public consultation on the basis of invitations for written submissions.

The Authority will complete a final report for the purpose of section 29(4) of the Act no later than nine months after receiving the Terms of Reference.

**TROY BUSWELL MLA
TREASURER, MINISTER FOR COMMERCE;
SCIENCE AND INNOVATION; HOUSING AND WORKS**

5 Appendix B. Legislation Relevant to Chicken Meat Production in Western Australia

Issue	Statute	Regulatory Agency
Animal welfare (including space requirements for chickens)	<i>Code of Practice for Poultry in Western Australia 2003</i> – under the <i>Animal Welfare Act 2002</i>	Department of Local Government and Regional Development
Transporting poultry (load size and containment)	<i>Road Traffic Act 1994</i>	Western Australian Police Service
	<i>Code of Practice for the Transportation of Poultry in Western Australia 2003</i>	Department of Local Government and Regional Development
Agricultural and veterinary chemicals	<i>Agricultural and Veterinary Chemicals Act 1994</i>	Australian Government Department of Agriculture, Fisheries and Forestry
Use, storage, handling and disposal of pesticides	<i>Health (Pesticides) Regulations 1956</i>	Department of Health
Storage of fuels, solvents, explosive and dangerous goods	<i>Dangerous Good Safety Act 2004</i>	Department of Consumer Employment and Protection
Farm model and activities	<i>Chicken Meat Industry Act 1977</i>	Chicken Meat Industry Committee
Environment	<i>Environmental Code of Practice for Poultry Farms in Western Australia, May 2004</i>	Department of Environment and Conservation
	<i>Environmental Management and Cleaner Production Directory for Small and Medium Businesses: A Guide to Pollution Prevention.</i>	Department of Environment and Conservation
	<i>Environment Protection and Biodiversity Conservation Act 1999</i>	Department of Environment, Water, Heritage and the Arts
Odour emissions	<i>Odour Methodology Guideline 2002</i>	Department of Environment and Conservation
Noise emissions	<i>Environmental Protection (Noise) Regulations 1997</i>	Department of Environment and Conservation
NPI substance emissions; i.e. ammonia	<i>Environmental Protection (NEPMNPI) Regulations 1998</i>	Department of Environment and Conservation
Licence to take surface water and groundwater	<i>Rights in Water and Irrigation Act 1914</i>	Department of Water
Development in public drinking water source areas	<i>Metropolitan Water Supply, Sewerage and Drainage Act 1909</i> ; or <i>Country Water Supply Act 1947</i>	Department of Environment and Conservation, and Department of Water

(table continued....)

Issue	Statute	Regulatory Agency
Approval for developments that may affect the Swan-Canning estuary	<i>Swan River Trust Act 1988</i>	Swan River Trust
Impact on the values and ecology of land or natural waters	<i>Environmental Protection Act 1986</i>	Department of Environment and Conservation
Registration of offensive trades; handling of poultry manure	<i>Health Act 1911 (as amended)</i>	Department of Health
Sale, supply and use of poultry manure	<i>Health (Poultry Manure) Regulations 2001</i>	Department of Health
Safety in the workplace - Worksafe	<i>Occupational Safety and Health Act 1984</i>	Department of Consumer Employment and Protection
Food standards	<i>Australia New Zealand Food Standards Code</i>	Food Standards Australia and New Zealand
Weights and measurement	<i>Trade Measurement Act 2006</i>	Department of Consumer and Employment Protection
Food hygiene and safety	<i>Health (Meat Hygiene) Regulations 2001</i>	Department of Health
	<i>Health (Food Hygiene) Regulations 1993</i>	Department of Health
	<i>Health (ANZ Food Standards Code Adoption Regulations 2001</i>	Department of Health
Subdivision of land	<i>Town Planning and Development Act 1928</i>	WA Planning Commission; Department of Planning
Land zoning and development approval	<i>Town Planning and Development Act 1928</i>	Local shires or councils
Land use planning	<i>Statement of Planning Policy No.4.3: Poultry Farms Policy, June 2004</i>	WA Planning Commission

Source: WA Department of Agriculture and Food web site

6 Appendix C. Glossary

ACCC	Australian Competition and Consumer Commission
Act	<i>Chicken Meat Industry Act 1977</i>
broiler chicken	Defined in the <i>Chicken Meat Industry Act 1977</i> as “a chicken which is being or has been grown under intensive housing conditions specifically for consumption as meat after processing.”
Committee	Chicken Meat Industry Committee
NCP	National Competition Policy