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**Submission by Inghams Enterprises Pty. Limited**

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Inquiry into the  
Chicken Meat Industry Act 1977

Draft Report by the Economic Regulation Authority

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**INGHAMS ENTERPRISES PTY. LIMITED SUBMISSION ON THE ERA DRAFT REPORT**  
**ON THE INQUIRY INTO THE CHICKEN MEAT INDUSTRY ACT 1977**

**1) Introduction**

As outlined in the ERA Draft Report on the Chicken Meat Industry Act 1977, this legislation has been in effect since 1975, firstly as the Chicken Meat Industry Committee Act 1975, which then evolved into the Chicken Meat Industry Act 1977. A review process over the years since then has resulted in the Act as we know it today.

The Act was introduced at a time when the chicken meat industry in Western Australia, and Australia as a whole, was a new and fast developing industry. Originally the Act was intended to stabilise the industry by:-

- i. Setting an average grower fee.
- ii. Provide dispute resolution.
- iii. Set prescribed Contract Grower Agreements.
- iv. Approve new and / or expansion of shedding within the industry in WA.

Today, the Western Australian chicken meat industry is a far cry from what it was in the 1970s, which prompted this legislation. Agricultural industries throughout the world have seen the effect of government intervention, be it in the form of quotas, boards or legislation such as the Chicken Meat Act 1977. All have proved detrimental to the respective agricultural industry in the long term if not removed when its initial purpose has been served. This type of governmental intervention ultimately becomes anti-competitive and restrictive to a point that precludes commercial outcomes. The chicken meat industry in Western Australia is, and has been for several years, at this point.

Businesses need to be able to compete on a state, national and global level. The chicken meat industry in Western Australia is no different. It is a fact that in 2008 Ingham Western Australia employed close to 700 people, which created approximately 3 500 jobs in the State, when taking into account support industries. The Ingham plant in Osborne Park was processing 410 000 birds per week and was satisfying all local chicken meat demand. Ingham Western Australia had 20 Contract Broiler Growers.

Currently, Ingham Western Australia employs approximately 615 people, creating 3 000 jobs within the state, a reduction of 16.6% over 2008. Now 335 000 birds per week are processed through the Osborne Park facility, an 18.3% reduction, and we import on average 110 tonne of product from South Australia (a state that no longer has legislation). Ingham Western Australia now has 16 Contract Broiler Growers, a 20% reduction. Further cut backs are planned to take place in 2011.

The Chicken Meat Industry Act's intention in the 1970s was to correct what was seen as an imbalance in the negotiating power between large well resourced processors and small poorly resourced growers and in so doing bring stability to a fledgling industry. In the 1970s and 1980s the Act probably achieved this quite adequately.

Today the poultry meat industry in Australia is a stable and relatively mature industry. Growers are large and well resourced having ready access to the best financial and legal advice. Growers have strong networking at both state and national level through grower bodies and associations and as such have strong negotiating power. This increase in grower negotiating power and industry stability has been acknowledged in all other states by legislation being repealed or changed to eliminate involvement in fees and contracts. The legislation was seen by grower, processor and the industry as a whole as being anti-competitive and counter-productive.

## **2) Review of ERA Draft Submission**

Ingham's initial comment on the ERA's draft submission is that many of the recommendations made are based on conjecture, opinion and supposition. The document is littered with phrases including:-

*"...it is likely..."*

*"..could be..."*

*"... regulation could improve..."*

*"...may result..."*

*"...appears to be..."*

The decision to uphold or repeal the Chicken Meat Industry Act needs, and must be, based on fact. The ramifications of the decision are too important for the chicken meat industry in Western Australia for it to be based on the opinions of the grower, processor or review committee.

Further, there are "factual statements" made in the draft document that Ingham deems to be incorrect. These include:-

*"- the growing fee is a small proportion of the costs of producing chicken meat;"* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg vi)

*"Setting an average fee on the basis of the costs of an efficient notional production model;"* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg vi)

*“A similar invitation was extended to Bartter Enterprises and Inghams Enterprises but was not taken up.” (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 8)*

*“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.” (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 10)*

*“Mt Barker Chickens has a processing facility in Mt Barker. Its feed is produced by Milne Feeds, Welshpool.” (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 12)*

*“to improve chicken growing conditions in the industry with all growing premises required to be approved by the Committee; and” (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 17)*

*“The cost of production model is based on cost estimates of inputs into an efficient notional broiler farm. The model is developed and updated in consultation with growers and processors, and is available to all industry parties” (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 19)*

*“However, most growers (83 per cent) are on prescribed form agreements under the Act.” (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 20)*

*“For example, it would be in the processors’ interest to encourage growers to invest in excess capacity (more than is needed to meet the demand by retailers), and then to reduce the stocking density in order to get growers to accept a lower fee” (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 33)*

*“reducing the transaction costs and the costs of disputes and arbitration associated with grower contracts; and” (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 36)*

*“However, the composition of the Committee limits the extent to which growers can exercise their power and results in a balanced position rather than favouring one party in particular” (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 47)*

The recommendations made in the draft report have not been based on the facts pertaining to the chicken meat industry in Western Australia or Australia as a whole. This submission aims to supply the known facts about the chicken meat industry within Australia and more specifically within Western Australia and correct the misconceptions and statements detailed above.

### 3) The Real Issues With The Chicken Meat Industry Act 1977

It has been recognised by the ERA in the draft report that *“factors in the Western Australian chicken meat industry give rise to a market structure similar to those seen in other states”* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 31), yet Western Australia has legislation in place that is making Western Australia’s chicken meat industry non-competitive.

The four main issues in the legislation that are causing Western Australia to be non-competitive with the eastern states are:-

- i) Setting and gazetting of a grower fee.
- ii) Setting of prescribed agreements.
- iii) Dispute resolution through the CMIC.
- iv) Controlling the expansion of the industry in Western Australia.

#### 3.1) Setting and gazetting of the grower fee.

The Chicken Meat Industry Act 1977 requires that a grower fee be determined and gazetted through the CMIC. This fee is derived from a Notional Model. In order to evaluate this process and its effectiveness an insight into the Notional Model and the structure of the CMIC is required.

##### a. The Notional Model

The Notional Model was developed and is updated by the growers in Western Australia, with no input from processors, and based on the “current cost accounting” method. Current cost accounting is a form of inflation accounting and in the past has been a method used in countries with hyper inflation. Current cost accounting attempts to revalue old assets at replacement cost and in so doing account for inflation. This method, whilst in vogue in the past decade, is now long outdated. It has several disadvantages which include:-

- i) Manipulation of asset values.
- ii) Is susceptible to fair value and market variables.
- iii) Requires many factors to be considered in order to be accurate.
- iv) Is time consuming.
- v) Ultimately is a method that is complex and difficult to understand intuitively.
- vi) A Notional Model as opposed to a processor / grower model is no longer relevant.
- vii) The Notional Model is flawed in several areas.

The Notional Model currently put forward by the growers is, as stated, flawed in a number of areas. It is not representative of the facilities used in Western Australia and it is irrelevant. Fees should be negotiated on a processor / grower basis.

Further when compiling the Notional Model template, as assets have been re-valued, provision for depreciation and repairs and maintenance on current asset values in effect results in “double dipping”. This therefore artificially inflates the actual cost of broiler growing. Escalating land and property values in Western Australia that are far in excess of inflation only exacerbate the situation.

Manipulation of the Notional Model is evident when examining the minutes of a CMIC meeting held on 11<sup>th</sup> July 2008. At this meeting the grower fee was up for review and the grower representatives duly put the Notional Model to the committee members. The updated Notional Model had produced a fee of 70.66 cents per bird, up 6.1% on the fee of 66.59 cents per bird gazetted on 30 June 2007. On review of the Notional Model it was noted that there was an error on the depreciation of “Medium Tractor” (Cost of Production, Industry Notional Model, July, 2008, Pg 11). The tractor had been depreciated in full instead of by 10%. This inflated the depreciation cost in the model by \$45 249.00 or 3.27 cents per bird on the overall growing cost. The CMIC Chairman asked for the Notional Model to be corrected and resubmitted. This was duly done on the 25<sup>th</sup> July 2008. The Notional Model came back to the committee with a grower fee of 70.66 cents per bird i.e. unchanged despite the medium tractor depreciation having been corrected! The processor representatives protested, the fee of 70.66 cents per bird was however proposed and passed by the CMIC. This clearly demonstrates that the Notional Model is open to manipulation.

Failure of the CMIC on voting to reject the fee of 70.66 cents per bird demonstrates that the Notional Model and the method of current cost accounting used therein are complex and difficult to understand.

Further to this, as was noted in the draft report the Notional Model, July 2010, a full time farm hand is costed into the Notional Model at \$90 526.00 while the current West Australian average annual earnings is \$57 000.00 (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 42). This further demonstrates the use of ambit figures and resultant inefficiency.

When reviewing the increases in the Notional model over time, these increases far exceed the prevailing rate of inflation as the table below clearly demonstrates.

**Table 1 Gazetted Grower Fee Over Time**

YEAR	GAZETTED GROWER FEE (cents per bird)	PERCENTAGE INCREASE
JULY 2007	66.59	
JULY 2008	70.66	6.11%
JULY 2009	69.74	-1.3%
JULY 2010	80.57	15.5%

- An average increase of 6.55% per annum

It has been clearly demonstrated that the Notional Model is and has been subject to ambit figures to calculate the cost of production. This results in inefficiency in the chicken meat industry through artificially inflating the grower fee. This is an inefficiency that a low margin industry can ill afford. It is a legislative process that is not in the long term interest of the processor, grower, industry or consumer.

b. Chicken Meat Industry Committee

It continues to be Ingham's view that the fixing and gazetting of the price to be paid by processors to growers for broiler chickens by the CMIC pursuant to the Chicken Meat Industries Act 1977 is prohibited conduct for the purposes of Part IV of the Trade Practices Act as outlined in Ingham's original submission paper.

When reviewing the minutes of past CMIC meetings it can be seen that processor representatives have, after receiving independent legal advice, long objected to the determining of the grower fee at the CMIC. Processors have voiced this objection through abstaining during the voting conducted around gazetting of the grower fee.

The grower representatives, the independent representatives and the Committee Chairman have all been fully aware of the processors' views regarding the process of determining and gazetting the grower fee. This concern was ultimately conveyed to the Minister for Agriculture in a letter dated 2<sup>nd</sup> October 2009 in which Ingham relayed to the Minister these concerns and advised that Ingham declined the invitation to nominate a company employee to represent the processors on the CMIC.

Examination of the structure of the CMIC reveals that it is comprised of two processor representatives, two grower representatives, two independent representatives and a Chairman as required by the Chicken Meat Industry Act 1977. It is however important to note, that with regard to the two independent representatives, one is an Executive Officer of the Western Australian Farmers Federation (Inc), while the other is a farmer in

the wheat belt and on the board of Regional Development Australia. It is Ingham's opinion (whilst in no way suggesting they act in any way that is inappropriate) that the aforementioned independent representatives cannot be deemed as independent as there are obvious conflicts of interest.

The above demonstrates that the statement *"However, the composition of the Committee limits the extent to which growers can exercise their power and results in a balanced position rather than favouring one party in particular"* in the draft report (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 47) is open to challenge.

### In Summary

The draft report continually refers to an "Efficient Notional Production Model". *"Setting an average fee on the basis of the costs of an Efficient Notional Production Model."* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg iv) and *"The cost of production model is based on cost estimates of inputs into an efficient notional broiler farm. The model is developed and updated in consultation with growers and processors, and is available to all industry parties."* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 19).

It must be stated that the Notional Model is not efficient. It is inconsistent in its methodology and approach to the costing of the grower fee. It does not bear any relation to the facilities actually used in Western Australia, nor the costs associated with those facilities. It has little to no ability to recognise market forces within the chicken meat industry and is open to manipulation.

The fact that Ingham's current grower fee is set at 69.50 cents per bird for conventional shedding and 71.50 cents per bird for tunnel shedding, while the latest Notional Model and subsequent gazetted grower fee is currently set at 80.57 cents per bird means that the gazetted fee is currently sitting 12.7% higher than the actual fee. This cannot be reflective of an "Efficient Notional Model". The only logical conclusion is that the gazetting of the grower fee is being used to artificially inflate the actual grower fee and being done very effectively as Table 2 below demonstrates.



**Table 2 Comparison of Grower Fee by State**

STATE	GROWER FEE (Cents per bird Tunnel Shed)	EARNINGS PER m <sup>2</sup> (\$/m <sup>2</sup> )	PERCENTAGE DIFFERENCE TO WA EARNINGS PER m <sup>2</sup>
Western Australia	71.50	77.76	0%
Queensland	67.50	68.81	-13.00%
New South Wales	69.69	67.73	-14.81%
Victoria	73.60	75.11	-3.53%
South Australia	67.12	66.75	-16.49%

- Average earnings difference in WA as compared to other states +11.91%

The grower fee is a substantial cost in the production of a broiler chicken contrary to the statement “- *the growing fee is a small proportion of the costs of producing chicken meat;*” (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg vi). In the Ingham financial year ended 2009 – 2010 the grower fee amounted to 18.66% of the broiler production cost which is significant.

Later in the draft report it is acknowledged that “... *total payments to these growers are between \$23 million and \$26 million a year*” (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 38). Ingham would estimate that the total payments to growers in WA are closer to \$34 million per year. This is a substantial cost in any industry.

Ingham agrees that “*i.e. the owner-manager model is the least cost way of growing broiler chickens, and the returns to processors from growing chickens would be too low (and costs higher) if they were to do it themselves.*” Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 15). Certainly this should be the case however, in Western Australia, Ingham has found the opposite. In the financial year ended 2009 – 2010, the cost to grow a bird was 8.47 cents, or \$1.47 million per annum, cheaper through company facilities than through contract grower facilities. Further evidence of inefficiency within the current broiler grower system in Western Australia.

#### The Facts

- The Notional Model is open to manipulation.
- The Notional Model is not an efficient model.
- The Notional Model is complex and difficult to understand.
- The Notional Model is not used in any other state in Australia.
- The Notional Model and gazetting of the grower fee artificially inflates the actual grower fee.

- The Notional Model used in Western Australia is not appropriate for the chicken meat industry for the purpose of determining the grower fee.
- The gazetting of the grower fee is creating a huge imbalance in negotiating power, in favour of the grower.
- The structure of the CMIC is biased.
- This process benefits the grower only and as such there is no increase in “welfare to society” as a whole.

### 3.2) Setting Of Prescribed Agreements

As discussed earlier, the structure of the chicken meat industry in Western Australia is similar to that of the eastern states. The need for a business to be able to compete on a state and global basis is now a prerequisite for a successful business. In the retail sector national businesses are trending towards national pricing and as such suppliers are required to supply product to national retail businesses at national prices.

States are no longer operating in isolation. Western Australia businesses once had some protection from eastern states produce due to the distances involved. With advances in processing and transport technologies this protection has been significantly eroded, to the point that fresh and frozen meat products flow into Western Australia on a daily basis.

Increasing interstate business and the trend toward national pricing requires businesses with state based operations to adopt a more national approach. The adoption of a national type agreement within the state based operations is essential. This type of national agreement can then be adapted to cater for specific state based needs; however the main body of the agreement will remain intrinsically the same across these operations. Ingham has such a national “Broiler Chicken Growing Agreement” in place in the eastern states and it is operating very effectively for both grower and processor.

Within this national agreement there is a dispute resolution clause as is detailed below:-

#### *22. Dispute Resolution*

*22.1 A party must not commence court proceedings in respect of a dispute arising out of this Agreement (“Dispute”) (including without limitation any Dispute regarding any breach or purported breach of this Agreement, the interpretation of any of its provisions, any matters concerning a party’s performance or observance of its obligations under this Agreement, or the termination or the right of a party to terminate this Agreement) until it has complied with Clause 22.*

*22.2 A Party claiming that a Dispute has arisen must notify the other party to the Dispute in writing and set out details of the Dispute.*

- 22.3 *During the seven (7) day period after a notice is given under Clause 22.2 (“Initial Period”) each party must use its best efforts to resolve the dispute.*
- 22.4 *If the parties are unable to resolve the Dispute within the Initial Period (or any extension of that period which may be agreed in writing) then:*
- 22.4.1 *They must within a further seven (7) days appoint a mediator to mediate the Dispute; or*
- 22.4.2 *if the parties fail to agree on a mediator within that time, either of them may refer the Dispute for mediation to a mediator nominated by the then current president of the Law Society of Western Australia,*
- And parties must thereafter mediate the Dispute.*
- 22.5 *The terms on which the mediation is conducted and the procedure for the mediation will unless otherwise agreed in writing between the parties and the mediator be those provided for by the Rules and Practice Directions of the Supreme Court of Western Australia from time to time.*
- 22.6 *If the Dispute concerns monetary amount payable and/or owed by either party to the other under this Agreement and the parties fail within twenty eight (28) days of the appointment of the mediator to resolve the Dispute in accordance with Clause 22.4, then the parties must (unless otherwise agreed) submit the Dispute to arbitration using an external arbitrator (who must not be the same person as the mediator) agreed by the parties, or in the absence of agreement, appointed by the then current president of the Law Society of Western Australia, and the parties agree to accept the arbitrator’s determination as final and binding.*
- 22.7 *Each Party must (as applicable)*
- 22.7.1 *unless otherwise agreed bear its own costs of resolving a Dispute in accordance with Clause 22 other than the costs of an arbitration and bear equally the fees and proper out of pocket expenses of the mediator and any other third party expenses (including venue hire) related to the mediation; and/or*
- 22.7.2 *Bear in the proportions and to the extent determined by the arbitrator the costs of the arbitration and any related costs.*
- 22.8 *The parties agree that they will not refer a Dispute to any committee or other body established under CMI Legislation.*
- 22.9 *Nothing in this Clause 22 shall prevent the making of an application to the court by any party to the Dispute for urgent injunctive or declaratory relief. (Inghams Broiler Chicken Growing Agreement, June 2010, Pg 15, 16)*

All the eastern states have been operating under this national type of agreement, except in South Australia where agreements are based on individual contract but with similar terms and conditions.

It needs to be noted that the comment *“However, most growers (83 per cent) are on prescribed form agreements under the Act.”* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 20), is incorrect. Ingham growers have not had a signed agreement in place since the previous growing agreement expired in 2004. As it currently stands, all Ingham growers are on a batch to batch agreement. This is obviously not the preferred option for Ingham or the grower. It brings uncertainty and instability to the industry for both processor and grower. A further example of how the legislation is no longer achieving the objective of stabilising the industry.

### 3.3) Dispute Resolution Through The CMIC

In the draft report it states that *“The Authority also notes that there is a high hurdle rate that must be met to justify industry-specific legislation, with the benefits to society clearly outweighing the costs of legislation. However, it is likely that the costs of dispute resolution and arbitration would be higher under authorised collective bargaining than under the current legislation.”* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg iv).

The report goes on further to state *“The Authority accepts that the dispute resolution and arbitration provisions in the Act are strong, as the “fall-back” position is the gazetted fee determined by the cost of production. This provides a deterrent effect on all parties against entering into disputes involving excessive demands that diverge too far from the model.”* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 48).

There are a number of assumptions that have been made to arrive at the above statements that require further thought.

- a. That the Notional Model is efficient and as a result is close to the actual cost of production. In 3.1) of this submission the process and use of the Notional Model to arrive at the gazetted fee was discussed at length. In this section it was demonstrated that the Notional Model, using current cost accounting, was and is susceptible, amongst other things, to manipulation. This manipulation resulted in inefficiency and an inflated prediction of the grower fee and subsequently an inflated gazetted fee.
- b. That the composition of the CMIC will ensure that it *“... limits the extent to which growers can exercise their power and results in a balanced position rather than favouring one party in particular”*. Again this was demonstrated not necessarily to be the case.

The draft report has not considered that an inflated gazetted grower fee in turn inflates the actual grower fee. Table 2 Comparison of Grower Fee by State shows that the earnings per square metre in Western Australia are inflated by an average of 11.91%. This equates to the Western Australian grower fee being 7.5 cents per bird higher than the average Ingham grower in the eastern states.

Assuming that “*Western Australian growers produce around 50 million chickens per year...*” (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 38), this translates into an additional cost of \$3.75 million per annum to the Western Australian chicken meat industry. This cost is the “hidden cost of the arbitration” through the current legislation process and is not acknowledged in the draft report. This is a very real cost as the legislative process, through the CMIC, is favouring the grower and forcing the processor to settle at a higher fee in fear of having to pay the even higher gazetted fee.

There is the potential within the current system for the processor to be forced to pay the gazetted grower fee. As it currently stands the gazetted grower fee is 9.07 cents per bird higher than the current actual grower fee and 16.57 cents per bird higher than the eastern states when taking into account the earnings per square metre. This would result in the “hidden cost of arbitration” escalating to \$4.54 million per annum and \$8.29 million per annum respectively. This is a significant “hidden cost of arbitration” that Ingham would argue is much higher than the cost of mediation and arbitration under authorised collective bargaining.

Ingham agrees that there is a substantial incentive in the current legislative process for processors to settle on a grower fee in fear of paying the higher gazetted fee. However, there is nothing in the legislation from preventing the processor or grower from challenging the decision of the CMIC in the courts which would escalate the costs of arbitration through this process even further.

#### In Summary

The determination in the draft report that “*benefits to society clearly outweighing the costs of legislation. However, it is likely that the costs of dispute resolution and arbitration would be higher under authorised collective bargaining than under the current legislation*” is flawed. (Draft Report, Inquiry into the Chicken Meat Industry Act, 1977, 4 August 2010, Pg iv). It has been clearly demonstrated that there is a substantial and very real cost associated with the current legislation through the determination and gazetting of a grower fee. The gazetted fee is artificially inflating the actual grower fee by 11.91% when compared to the eastern states. In Western Australia this equates to \$3.75 million per annum. This cost far outweighs any “welfare to society”.

#### The Facts

- There are significant costs associated with the arbitration process through the Chicken Meat Act 1977 all be they “hidden”.
- Promotes inefficiency within the chicken meat industry in Western Australia.

- Makes the chicken meat industry in Western Australia non-competitive with other states.
- Does not fully consider market forces pertaining to the industry.
- The arbitration process through the CMIC benefits the grower only and as such there is no increase in “welfare to society as a whole”.

#### 3.4) Controlling The Expansion Of The Industry In Western Australia

The draft report concluded that *“The Chicken Meat Industry Act 1977 contains some restrictions on competition in the form of barriers to entry into the growing sector, through the regulations in growth expansion, and the requirement under the Act for the Chicken Meat Industry Committee to approve new growing premises. The Authority considers that the cost of these restrictions, resulting from the restriction of competition in the growing sector, are likely to outweigh the benefits, and that these restrictions should be removed. No other jurisdictions have similar provisions for controlling entry into the growing sector.”* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 59). Ingham agrees with this conclusion.

There is a need to reiterate that not only is the regulation in growth expansion under the legislation anti-competitive so are the other aspects of the legislation that have been detailed above.

There is also no indication that controlling expansion of shedding in Western Australia helps *“to improve chicken growing conditions in the industry with all growing premises requiring to be approved by the Committee; and”* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 17). The average condition of Ingham grower shedding in Western Australia is far below that of the eastern states. Very little advantage has been taken of any new technological advancement in broiler shedding within the last 10 to 15 years. The requirement for new shedding to be approved is effectively protecting and promoting the inefficient grower at the expense of a new breed of efficient and technologically advanced growers from entering the market.

The notion that *“For example, it would be in the processors’ interest to encourage growers to invest in excess capacity (more that is needed to meet the demand by retailers), and then to reduce the stocking density in order to get growers to accept a lower fee”* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 33) is incorrect. Although there may be some short term gain in doing this, such business practice would damage the industry irreversibly by sending growers into liquidation and discouraging any new or future investment in the poultry meat industry. As stated in Ingham’s original submission paper there is a relationship of strong mutual dependence between grower and processor which brings an overall balance.

### In Summary

The control and approval of shedding does not encourage competition or improved efficiencies. It restricts the potential entry into the chicken meat industry of better equipped and more technologically advanced production systems that can produce more efficient, better quality, better yielding birds. This in turn results in higher quality, safer and cheaper chicken for the consumer.

The legislation that encompasses the Chicken Meat Industry Act 1977 is no longer present in other jurisdictions. Not only has the chicken meat industry in these deregulated jurisdictions continued to function but is flourishing and expanding, while in Western Australia it is continuing to contract. This is evidence that the Chicken Meat Industry Act 1977 has served its purpose and that the chicken meat industry in Western Australia is now a mature and robust industry that needs to compete within the market without any legislative interference.

### The Facts

- Controlling expansion of shedding is a barrier to entry into the industry.
- It is a form of protectionism.
- Encourages inefficiency within the industry.
- Does not improve chicken growing conditions.
- It is anti-competitive.
- There is no increase in “welfare to society as a whole”.

## **4) Other**

It is necessary to correct other inaccuracies within the draft report that were highlighted at the beginning of this submission but have not yet been addressed.

- i. *“A similar invitation was extended to Bartter Enterprises and Inghams Enterprises but was not taken up.”* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 8)

It is necessary to state that neither Bartter Enterprises nor Inghams Enterprises were extended an invitation, either verbally or in writing, to meet with the ERA prior to the distribution of the draft report.

- ii. *“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.”* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 10)

Currently, neither Bartter Enterprises nor Ingham Enterprises bring in hatching eggs in order to hatch parent stock. All parent stock is brought in as day old chicks out of the eastern states.

- iii. *“Mt Barker Chickens has a processing facility in Mt Barker. Its feed is produced by Milne Feeds, Welshpool.”* (Draft Report, Inquiry into the Chicken Meat Industry Act 1977, 4 August 2010, Pg 12)

Since early 2010 the feed used by Mt Barker Chickens emanates from the Wesfeeds factory in Welshpool.

## **5) Conclusion**

The current inquiry into the Chicken Meat Industry Act 1977 has significant ramifications for the efficient and competitive operation of the chicken meat industry in Western Australia. All parties would agree, be they processor, grower, consumer or government agency, that for any industry to flourish and thrive it needs to be efficient and competitive at state, national and international level. Any intervention that reduces that industry’s ability to be efficient and thus compete effectively within the global arena will ultimately result in its demise.

To determine whether government intervention is beneficial for an industry, and to society as a whole, it is necessary to have a thorough understanding of the industry and the market in which it operates. In the case of the chicken meat industry it is generally poorly understood by the general business community and public. Very few outside of the industry appreciate the intricacies of the chicken industry. The lead times involved within the production cycle alone places a whole new dynamic on the business. From the initial importation of great grandparent breeding stock from overseas to the time the first roast chicken lands on the plate of the consumer a minimum of 2 ½ years has passed. The planning and investment involved in a production cycle of this length is immense and complicated. It requires unique skills, foresight and confidence within the industry for both processor and grower to effectively and efficiently manage these challenges.

The evolution of the chicken meat industry in Australia has been detailed in this submission and in previous submissions. It has progressed from the instability of a fledgling industry in the 1960s and 1970s that required the introduction of legislation in the 1970s to ensure a solid base for the industry to build upon. Over time the industry has matured and stabilised to the extent whereby the eastern states have removed the legislation as it was found to be anti-competitive, restrictive and precluded commercial outcomes. Since the legislation was removed in the eastern states, the poultry industry in these states has expanded and flourished to an extent that in excess of 250 tonne per week of poultry meat is flooding into Western Australia.

This submission has shown the inefficiencies and unnecessary cost that the Chicken Meat Act 1977 is placing on the chicken meat industry and consumer in Western Australia. To maintain the Chicken Meat Act 1977 as part of Western Australia legislation given the facts detailed in this submission is irresponsible and will result in the Western Australia chicken meat industry



continuing to contract. Chicken meat grown and processed in the eastern states and coming into Western Australia will steadily increase as the local industry contracts.

Ingham would appeal to the ERA that the recommendations to be contained within the final draft report on “The inquiry into the Chicken Meat Industry Act 1977” be based on fact and not conjecture, opinion and supposition.

In summary

- i. WA has a market structure similar to those seen in other states and therefore legislation should be consistent with and not independent of that operating in other states.
- ii. The CMIC Act should either be repealed or, if retained, it should not have any involvement in:-
  - a) Setting grower fees (these should be collectively negotiated on a processor / grower basis individually or through an ACCC collective bargaining authorisation or notification).
  - b) Setting of prescribed contracts / agreement and dispute resolution within these terms and conditions.
    - As in all other states, contract terms and conditions are negotiated individually or under the ACCC processes.
    - The ACCC has itself outlined certain terms and conditions it requires in contracts, including mediation and arbitration of fees and the mediation of contract matters in dispute.
    - Further, companies operating on a national basis must be able to operate with such contracts.
  - c) There should be no control over expansion of the industry.