

NSW POULTRY MEAT INDUSTRY COMMITTEE

CODE OF PRACTICE FOR THE CONDUCT OF NEGOTIATIONS BETWEEN PROCESSORS AND CONTRACT GROWERS

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Contact:

Secretary Poultry Meat Industry Committee

Total Agricultural Centre

PATERSON NSW 2421

Ph: 02 49398946

Email Joanna.blunden@dpi.nsw.gov.au

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www.dpi.nsw.gov.au/agriculture/livestock/poultry

NSW POULTRY MEAT INDUSTRY COMMITTEE GUIDELINES FOR AGREEMENTS

These guidelines for the drawing up of agreements between processors and growers (“**Guidelines**”) have been set by the Poultry Meat Industry Committee (“**Committee**”) in accordance with section 6(1)(a)(ii) of the *Poultry Meat Industry Act 1986* (the “**Act**”).

The Guidelines are in three (3) parts:

- A.** Interpretation;
- B.** Recommended Terms; and
- C.** Other Provisions.

These guidelines are not mandatory but are provided to assist in the orderly development of agreements between Processors and Growers. However, The Poultry Meat Industry Regulation 2003 (as Amended) provides for certain matters which must be addressed in any agreement and these are highlighted in the guidelines.

PART A - INTERPRETATION

Unless the context requires otherwise:

‘**Act**’ means the *Poultry Meat Industry Act 1986 (As Amended)*.

‘**batch poultry**’ has the meaning given in the Act and ‘**batch of poultry**’ has an equivalent meaning

‘**base rate**’ means the rate set by negotiation between a processor and a group of growers as a basis for payment for the growing of birds in accordance with the agreement.

‘**biosecurity manual**’ means the ‘National Biosecurity Manual for Contract Meat Chicken Farming’ developed by the Australian Chicken Meat Federation Incorporated and published in May 2002.

‘**efficiency incentive agreement**’ means an agreement in which payment for poultry is made to the grower in accordance with an efficiency incentive scheme described within the agreement.

‘**efficiency incentive rules**’ means rules:

- (i) That define the circumstances in which batch poultry is taken to be excluded poultry for the purposes of the scheme, and
- (ii) That establish the maximum variations (upwards and downwards) from the relevant base rate that will be allowed in relation to payments for batch poultry (other than excluded poultry) delivered under such an agreement, and
- (iii) That establish the factors according to which actual prices will be determined in relation to payments for batch poultry (including excluded poultry) delivered under such an agreement.

'efficiency incentive scheme' means a scheme to which a group of growers who are parties to such an agreement belong.

'excluded poultry' in relation to batch poultry which is the subject of an efficiency incentive scheme, means batch poultry that, pursuant to the efficiency incentive rules for the scheme, is taken to be excluded poultry for the purposes of the scheme.

'facilities' means the minimum facilities that the processor requires in writing as necessary to grow batch poultry, as specified in Annexure 2.

'grower group' means a number of contract growers with a common interest who have elected to work together in negotiations with a particular processor with whom they have or aim to have an agreement to grow poultry.

'non-participating grower' means a contact grower who has not elected to participate in a grower group.

'poultry' has the meaning given to 'designated poultry' in the Act from time to time.

'Processor Services' means the services to be provided by a processor to a grower as specified in the relevant agreement.

'Processor Supplies' means the supplies to be provided by a processor to a grower as specified in the relevant agreement.

'Recommended and **Required Terms**' means the Recommended and Required Terms set out in Part B of these Guidelines.

PART B – RECOMMENDED AND REQUIRED TERMS

It is strongly recommended that any agreement negotiated between a processor and a grower or group of growers address the terms included in these guidelines. Required terms as provided for in the regulations are highlighted and must be addressed in any agreement unless formally agreed by both parties to be left out. Where it is agreed by both parties that a required term is not adopted, this must be noted.

It is also strongly recommended that growers obtain legal and accounting advice prior to completing negotiations on the drawing up of or changes to an agreement. Before executing an agreement, the grower must supply the processor with a signed statement that either the grower has received independent legal advice or is aware that they should seek independent legal advice but have elected not to do so.

Term of Agreement (Required)

1. specify the commencement date and specify that the agreement will terminate on a set expiry date. It is recommended that any term set should take into account the fact that sustainable investment for growers is measured by rates of return on investment over time and consequently an agreement should have a minimum term of 5 years.
2. where processing of a particular batch of poultry is incomplete as at the expiry date of the agreement, allow the term of the agreement to be extended until processing and collection of that batch is completed.

Notice of intent to enter into new Agreement (Required)

3. require each party to give at least six (6) months notice to the other party (or any greater period agreed by the parties) before the expiry date of the agreement, if it wishes to enter into negotiations for a new agreement (a “**notice of intent**”). If the other party declines the notice of intent, or fails to respond to the notice of intent within thirty (30) days of the notice (with the thirty day period to commence from the date of receipt or deemed receipt of the notice under the terms of the agreement) or such longer period as may be agreed by the party that provided the notice of intent, the agreement will expire at the end of the term.

Obligations of fairness, reasonableness and good faith (Required)

4. for growers of a particular class of batch poultry with substantially the same contract terms and conditions, provide that the processor must, so far as reasonably practicable, treat those growers fairly and on materially similar terms.
5. require the parties to carry out their respective obligations under the agreement promptly and to act reasonably and in good faith in all matters relating to the interpretation and carrying out of the agreement.

Processor obligations (Required)

6. outline the obligations of the processor to the grower including, without limitation and to the extent consistent with the relevant agreement, conditions requiring the processor to:
 - (b) provide birds of reasonable quality;
 - (c) provide feed of reasonable quality,
 - (d) supply to the grower, at no cost, a broiler growers’ manual(s) relating to production, biosecurity and quality assurance/HACCP and such Processor Supplies and Processor Services as are specified in the agreement;
 - (e) deliver or arrange delivery of all Processor Supplies to the grower’s farm, and collect or arrange collection of Processor Supplies from the grower’s farm as required under the terms of the agreement;
 - (f) provide reasonable notice to the grower before all deliveries and collections of Processor Supplies and before provision of any Processor Services;
 - (g) make payments to the grower in accordance with the relevant agreement; and
 - (h) provide information and sound advice to growers on industry issues and/or matters relevant to production performance or the calculation and payment of growing fees.

Grower obligations (Required)

7. outline the obligations of the grower to the processor including, without limitation and to the extent consistent with the relevant agreement, conditions requiring the grower to:
 - (a) provide such facilities and supplies as are specified in the agreement;
 - (b) provide labour and management services of a kind and to the minimum standards required by the broiler growers’ manual, including the conduct of effective quality assurance relating to food safety, environmental management, animal welfare and biosecurity;
 - (c) provide information and advice to the processor of any material events which relate to the health of the birds and/or grower’s performance under the agreement; and

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- (d) carry out any other activities and do any other things that the parties agree are needed to raise batch poultry.

Payment Terms (Required)

8. require the parties to pay amounts due by the relevant due date for payment and, in the case of a standard agreement, specify that payment must be made in full in the manner described in the agreement without any unauthorised deduction or allowance by way of set-off, counterclaim or withholding.
9. specify payment terms, including the date on which payment becomes due and payable, for batch poultry received by the processor from the grower as agreed by the parties,.
10. specify the timing of price setting between the processor and grower group or non-participating grower.
11. specify payment arrangements for poultry killed during catching, removal from the grower's premises and transport.
12. specify arrangements for any deductions the processor may make from the amount to be paid for poultry that is rejected by the processor as unfit for processing in accordance with the terms of the agreement, or for poultry which fails to meet the standards specified in the agreement.
13. specify the grower's rights in respect of any poultry that is rejected or downgraded by the processor.
14. specify the processor's obligations to count and weigh poultry.
15. permit a party to charge a reasonable commercial rate of default interest for any monies due but unpaid by the other party, payable on demand and calculated from the due date from payment.

Minimum throughputs or returns

16. specify whether or not there are any commitments as to minimum density and throughputs or minimum returns to the grower in return for the provision of required facilities in accordance with Guideline 7(a).

Ownership

17. confirm that, unless otherwise agreed, Processor Supplies (poultry, feed, medication and vaccines) made available to the grower by the processor remain at all times the property of the processor.
18. specify arrangements for return of Processor Supplies on hand at termination.

Efficiency incentive agreements

19. where the agreement is an efficiency incentive agreement, require the processor, when making any payment under the efficiency incentive agreement according to a formula agreed by the processor and the relevant grower(s), to provide documentation to the relevant grower setting out:
 - (i) the breakdown of each component of the payment for batch poultry delivered under the agreement; and
 - (ii) the reason for any variation from normal payment terms, including

the relevant statistical information.

Audit

20. specify rights of audit available to the grower(s), including the right to audit payments made to them by the processor.

Abnormal losses and compulsory slaughter (Required)

21. specify the obligations of the parties in respect of abnormal losses, including terms that:
- (a) define 'abnormal losses' for the purposes of the agreement;
 - (b) set out what is to occur when abnormal losses are attributable to conditions for which the grower is directly responsible;
 - (c) set out what is to occur when abnormal losses are not directly attributable to the grower;
 - (d) require the processor to pay the grower an amount on account of the grower's reasonable share of any compensation monies paid to a processor following the compulsory slaughter of batch poultry.

Disposal of Litter and Dead Birds

22. specify the responsibilities of the parties in respect of the collection and disposal of:
- (a) used litter;
 - (b) dead birds collected during the growing of poultry

ensuring that environmental management requirements are adhered to.

Adherence to other Legislation

23. specify that any agents, employees or other persons acting on the behalf of the processor or grower must abide by:
- (a) the requirements of the NSW Occupational Health and Safety Act 20 when entering on to a farm,
 - (b) the specific requirements for the land transport of poultry as required by the Australian Standards and Guidelines for the Welfare of Animals – Land Transport Code.

Assignment

24. specify that neither party may assign or novate their rights and obligations under the agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.

Disputes (Required)

25. in the event of a dispute, specify the procedures to be followed by either party before placing the matter before the Committee in accordance with the regulations.

Rights of access

26. grant the processor reasonable rights of access to facilities used by the grower to grow batch poultry under the agreement, subject to any conditions agreed by the parties.

Termination and suspension of the agreement (Required)

27. specify the circumstances in which the agreement may be terminated by either party before the end of the term including, without limitation, if:
- (a) that party intends to cease operations as a grower or processor, in which case termination must be subject to at least **75 days** prior written notice to the other party; or
 - (b) the other party commits a serious breach of the agreement which, if the breach is capable of being rectified, has not been rectified within a reasonable period of notice (to be specified in the agreement), in which case the party terminating the agreement in these circumstances must provide at least **7 days** prior written notice.
28. provide for the immediate termination of the agreement:
- (a) at the election of the innocent party if:
 - i) either party becomes insolvent, bankrupt or subject to the appointment of a mortgagee, a receiver or manager or an investigator to investigate its affairs, or the making of any arrangement or composition for the benefit of creditors or being the subject of winding up proceedings;
 - ii) either party is unable to continue trading;
 - iii) in the case of the grower, the grower encumbers or parts with possession of any of the Processor Supplies, except as agreed by the processor in accordance with the terms of the agreement;
- or
- (b) if both parties are in agreement
29. where the importation of chicken product has a '*significant adverse effect*' (as defined in the relevant agreement) on the domestic price and/or demand for chicken or chicken pieces (a "**Suspension Event**"):
- (a) allow a party to suspend any of its obligations under the agreement affected by the Suspension Event (other than an obligation to pay money due under the agreement) for a period up to three (3) months; and
 - (b) specify procedures for continued suspension and/or termination of the agreement if the Suspension Event continues after that initial three (3) month suspension period.

Nothing in the agreement should permit a party to suspend or terminate the agreement in accordance with this guideline if that party could reasonably have avoided the Suspension Event.

Notices

30. specify arrangements for service of notices by either party.

Variation

31. provide that the agreement may only be amended by agreement in writing signed by the parties.
32. in the case of an efficiency incentive agreement, provide that the efficiency incentive rules for the related efficiency incentive scheme may be varied with the agreement of a majority of growers.
33. where there is a variation which requires substantial capital investment on behalf

of the grower, require the processor to provide a letter of intent and specify the assurances, if any, that it will provide about renewing the contract on the expiry of the present term.

Confidentiality and Intellectual Property

34. specify the obligations of either party to:
- (a) maintain the confidentiality of any confidential information (as defined in the agreement) disclosed to it by the other party;
 - (b) use the confidential information and any intellectual property made available by the other party only for the purposes of the agreement; and
 - (c) if agreed, to return material containing confidential information of the other party to the owner on termination of the agreement.

For the avoidance of doubt, the duty of confidentiality:

- (i) must be expressed to be subject to the requirements of the law and any other exceptions agreed by the parties; and
- (ii) must continue after termination of the agreement.

Inconsistency

35. specify that, in the event of any inconsistency between the terms of the agreement and the Act, the order of priority will be:
- (i) the Act including the regulations; then
 - (ii) the agreement.

Governing Law

36. specify that the governing law of the agreement is New South Wales law.

Annexures

37. include (as a minimum) the following annexures:

(A) ANNEXURE 1 - Type of agreement and payment terms (Required)

Annexure 1 must:

- (a) specify whether the agreement is an efficiency incentive agreement or a standard agreement, and
- (b) if the agreement is an efficiency incentive agreement:
 - (i) contain or adopt efficiency incentive rules for the efficiency incentive scheme to which growers who are parties to the efficiency incentive agreement will belong, and
 - (ii) include details of payment terms for batch poultry received by the processor from the grower, as agreed by the parties; or
- (c) if the agreement is a standard agreement, if not addressed elsewhere in the agreement, include details of payment terms for batch poultry received by the processor from the grower, as agreed by the parties.

(B) ANNEXURE 2 - Facilities

PART C - OTHER PROVISIONS

The processor and grower may agree to the inclusion of other provisions dealing with any other relevant matters not contemplated by these Guidelines, provided those other provisions do not conflict with the Act or NSW law.

Such provisions may include, but are not limited to, provisions dealing with:

- the interpretation of such terms and expressions as the parties consider necessary;
- representations and warranties to be provided by either party;
- default payments;
- waiver of rights;
- severability;
- liabilities;
- goods and services tax;
- insurance;
- force majeure;.