

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

Amendments to the Poultry Meat Industry Act 1986 require the Poultry Meat Industry Committee (PMIC) to establish a code of practice for use in the conduct of negotiations 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.

The regulations under the Act require that all agreements must be negotiated in accordance with the code and it is envisaged that the code would also be used for any other negotiations between processors and growers.

PART A - DEFINITIONS

Unless the context requires otherwise:

'Act' means the *Poultry Meat Industry Act 1986*

'contract grower' means a person who has, or aims to have, an agreement with a particular processor to grow poultry for that processor.

'grower group' means a group of contract growers formed in accordance with Clause 1.

'negotiating team' means a number of elected representatives of a grower group and representatives of the relevant processor who come together to negotiate relevant issues concerning their relationship as growers and processor of poultry.

'non-participating grower' means a contract grower who at a particular time is not a member of a relevant grower group because:

- (a) they do not elect to be a member of that grower group pursuant to Clause 2.4, or
- (b) no such grower group exists.

PART B –NEGOTIATING PARTIES

1. Formation of Grower Groups

- 1.1 A grower group will be formed when not less than three contract growers with a common interest on the basis of production system and/or geographic location agree amongst themselves to form a group to work together in negotiations with a particular processor with whom they have, or aim to have, an agreement to grow poultry;
- 1.2 Grower groups will regulate their affairs as they see fit amongst themselves and from time to time may appoint one or more of their members as office bearers to manage, or assist to manage, the affairs of the group.

2. Participation in Grower Groups

- 2.1 If a contract grower elects to be a member of a relevant grower group they will have the right to appoint, or join in the appointment of, growers from that group as grower representatives on the negotiating team;
- 2.2 Grower groups will negotiate collectively with the processor through their grower representatives elected pursuant to Clause 2.1.
- 2.3 If a grower group is not formed then negotiations between the processor and each relevant grower will be on a “one to one” basis;
- 2.4 A contract grower will notify the relevant processor whether or not they elect to be a member of the relevant grower group, and in default of such notification they will be deemed not to be a member of that group;
- 2.5 Nothing shall prohibit a contract grower and their processor from discussing any matter at any time.

3. Composition of the Negotiating Team

- 3.1 The negotiating team will be formed with representatives from the grower group and representatives from the relevant processor.
- 3.2 The number of grower representatives on the negotiating team will be not be less than two (2) nor more than four (4), and the names of the grower representatives will be notified to the processor and each member of the grower group.
- 3.3 The number of processor representatives on the negotiating team will be determined by the processor but shall not exceed the number of grower representatives and the names of the processor representatives will be notified to the grower group.

4. Election of Grower Representatives on the Negotiating Team

- 4.1 Members of the relevant grower group will elect their representatives to the negotiating team annually by simple majority vote.
- 4.2 Any member of the relevant grower group who is supported by at least two other members of the same group may nominate or be nominated to be a grower representative for that group.
- 4.3 Where there are more candidates than available positions, the successful candidates will be elected by majority vote on a “first past the post” method at a meeting called for that purpose or by postal vote.
- 4.4 A secret ballot will be held if any member of the grower group requests it.
- 4.5 If a casual vacancy occurs amongst the grower representatives, either at a particular meeting of the negotiating team or generally, that vacancy may be filled by election in

accordance with the previous provisions of this Clause, or in default of such election by the other grower representatives.

5. Discontinuation

The negotiating team will cease to operate if the relevant grower group ceases to exist.

PART C – CONDUCT OF NEGOTIATIONS

1. Functions of the Negotiating Team

- 1.1 To negotiate all matters in relation to the growing agreements between members of the grower group and the relevant processor including, without limitation, agreement renewals, fees and fee adjustments, biosecurity issues, facility standards, OH&S issues, shedding capacity and production issues.
- 1.2 To attempt to resolve disputes between any one or more members of the grower group and the processor.

2. Conduct of Meetings of the Negotiating Team.

- 2.1 Meetings may be called on reasonable notice by any member of the negotiating team and will be held at such convenient location as the negotiating team decides.
- 2.2 More than 50% of the grower representatives and one processor representative present throughout a meeting will constitute a quorum for meetings of the negotiating team.
- 2.3 Matters can only be agreed by the negotiating team if the processor representatives and more than 50% of the grower representatives agree.
- 2.4 In carrying out its functions, the negotiating team may:
 - (a) take such action and obtain such information as in its opinion is necessary or desirable;
 - (b) at the request of either grower or processor representatives, invite a person who in their opinion is appropriately qualified to furnish advice to the team on any relevant matter. Provision for the payment of any costs associated with the giving of advice will be agreed by the negotiating team prior to the advice being sought.
- 2.5 Decisions of the negotiating team are not binding unless and until they are ratified by the grower group in accordance with Part C Clause 4.

3. Meetings of Grower Representatives of Negotiating Team

The grower representatives may meet on their own or with members of the relevant grower group (with or without advisers) to discuss any issue.

4. Resolutions of the Negotiating Team - Matters Relating to All Growers

- 4.1 All decisions of the negotiating team will be put to the members of the grower group for ratification as soon as practicable.
- 4.2 Decisions of the grower group will be by secret ballot at a meeting called for that purpose or by postal vote, in either case conducted in such manner as members of the group agree.
- 4.3 Decisions on any matter will be by affirmative vote of not less than two thirds of the members of the grower group who vote on the matter, either in person or by proxy at a meeting or by postal vote.
- 4.4 If a decision of the negotiating team is not ratified by the required majority of the grower group, the grower group will promptly discuss the issues of concern with the grower representatives for them to take back to the negotiating team.
- 4.5 If the negotiating team is unable to reach agreement on an issue within a reasonable time any member of the negotiating team may call a meeting of the grower group to put forward the views of the members of both groups of representatives to the negotiating team and discuss that issue with a view to its resolution by vote of the grower group in accordance with the preceding provisions of Clause 4.
- 4.6 Decisions of the grower group are to be advised promptly to all members of the grower group and to the processor.
- 4.7 If despite the processes contemplated by this Clause 4 an issue remains unresolved it will be dealt with in accordance with Part D.

5. Mediation of Disputes between Individual Growers and the Processor

- 5.1 Where the negotiating team is called upon to help to resolve a dispute between one or more members of the grower group and the processor, the team will take all reasonable steps to deal with the issue promptly
- 5.2 If the negotiating team is for any reason unsuccessful in achieving resolution of the dispute within a period of one calendar month after it is first notified to the negotiating team, the dispute resolution procedures of the relevant growing agreement will apply.

PART C - NON PARTICIPATING GROWERS

1. A non-participating grower is free to negotiate directly with the processor on any matters concerning their relationship.
2. Where a member of a grower group elects to become a non-participating grower that grower and the processor will be bound by all previous decisions which are binding on the group, unless they otherwise agree.
3. A non-participating grower will not be eligible to participate in ballots convened for the selection of grower representatives nor to attend grower meetings convened by the grower group,
4. A non-participating grower will have the same rights as a participating grower in relation to the disputes/mediation procedure (Part D).

PART D - DISPUTES/MEDIATION

If at any time either party to a growing agreement is aggrieved by any act or omission of the other party in relation to the agreement or by any other matter relating to their relationship as grower and processor of poultry, the aggrieved party may promptly notify the other party and, subject to the terms of their grower agreement, the parties will seek to resolve the dispute in accordance with the following procedures:

- (a) By discussion and conciliation through the negotiating team.
- (b) If the negotiating team is for any reason unsuccessful in achieving resolution of the dispute within a period of one calendar month, both parties must endeavour to settle the dispute by mediation through PMIC or an external mediator appointed by PMIC and agreed to by the parties, provided always that PMIC **will not** become involved in disputes concerning the amount of any fee payable under a poultry growing agreement¹.
- (c) If the dispute cannot be resolved within a reasonable time by mediation then the parties may seek a facilitated negotiation chaired by a PMIC representative.
- (d) Unless otherwise agreed by the parties, if the dispute has not been resolved within one calendar month after lodgement of the dispute with the PMIC, then the dispute is to be referred to arbitration. The arbitration must be conducted in accordance with the requirements of the Commercial Arbitration Act 1984.
- (e) The parties will accept the determination of the arbitrator as final and binding. The arbitrator will be a person agreed between the parties. Failing agreement the arbitrator may be a person appointed by PMIC. The arbitrator shall not be the same person as the mediator.

¹ Note: the Poultry Meat Industry Act Regulations expressly prohibits PMIC assisting in the mediation or arbitration of a dispute as to the amount of any fee payable under a poultry growing agreement in relation to the growing of poultry.

- (f) The costs of the mediation and/or arbitration will be determined by the mediator and/or arbitrator.
- (g) If the parties fail to agree on an arbitrator either between themselves or one appointed by PMIC then the dispute will be resolved by court action.

PART E – NOTIFICATION

Any notification required or permitted under the Code of Practice will be in writing signed by or on behalf of the party giving such notice and given to the party or parties to whom such notice is addressed at their last notified address for that purpose, or in default of such notification then to their last known place of business in New South Wales. Such notification may be delivered by hand, by certified mail or by fax or emails (with usual receipt provisions included).

PMIC DISPUTE RESOLUTION FLOW CHART

