

Director
National Competition Policy Unit
Competition Taskforce Division
Treasury
Langton Cres
Parkes ACT 2600

Dear Sir/Madam,

Re: RESPONSE TO “REVITALISING NATIONAL COMPETITION POLICY” PAPER

Please accept the analysis below as our submission toward this Inquiry

1.0 The Australian Chicken Growers' Council

The Australian Chicken Growers' Council represents the interests of all contracted meat chicken and turkey farmers/growers (the two words are used interchangeably¹) in Australia. It is a federation of State Farming Organisations or equivalents and was formed in the late 1970s. The current CEO, and many of the current Board have been in the industry for more than 25 years and can readily draw on the expertise of some farming families going back to the formation of the industry in the late 1950's.

2.0 The Meat Poultry Industry - Statistics

Meat poultry includes meat chickens, turkeys, ducks and specialty birds (eg spatchcock, quail etc). Because few statistics are kept other than for chickens, only chickens will be considered below.

Chicken meat is the most consumed and least cost animal protein in Australia, with more than 50kg of chicken meat consumed *per capita* per year. ([ACME](#)). Meat chicken farms are the most efficient producers of animal meat protein per year, on a kg/ha farmed basis, with more than 50% meat poultry produced on farms of less than 50ha.

Poultry meat is the least carbon intensive form of animal meat protein production; and a highly efficient user of feed and precious water; with a feed conversion ratio less than 1.70kg feed per kg of meat produced and water use (*including* for cooling) around ¼ of that of beef.

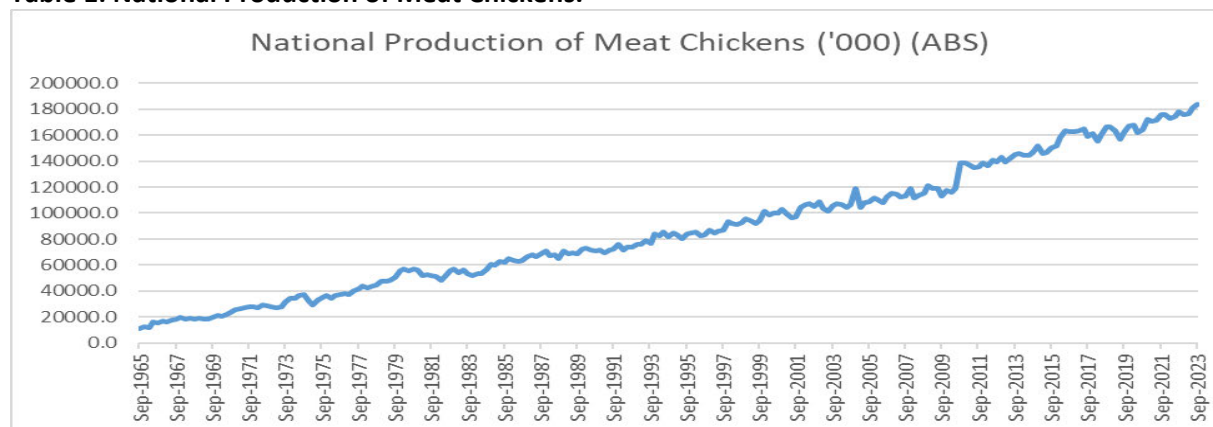
Poultry meat is a low fat, quality protein source with relatively high levels of tryptophan, Vit B12, zinc, and copper. It has a light taste which makes it versatile in cooking. Nearly 75% of chicken meat is sold as fresh product. Therefore, it cannot be transported for long periods and still retain a good shelf life for consumers because, with the exception of seafood, chicken is the most labile of all animal meats in terms of potential for spoilage.

Domestic poultry meat consumption exists in a competitive consumer market with other meats (beef, lamb, pork and processed meats) and to a certain extent eggs as the primary sources of protein in the Australian diet.

¹ The terms “chicken”, meat poultry” and “chook” are also used interchangeably in this document to mean all forms of meat poultry including turkeys and ducks, even though “chook” is a colloquialisation for chickens used uniquely in Australia.

National Meat Chicken production has risen steadily with population. More than 97% of poultry meat production is consumed domestically ([ACMF](#)). So production is an accurate reflection of Australian population growth and meat preferences. “Chicken production follows population” has been the norm until the last 5-10 years whence there has been some escalation in the rate of *per capita* demand on the back of high red meat prices.

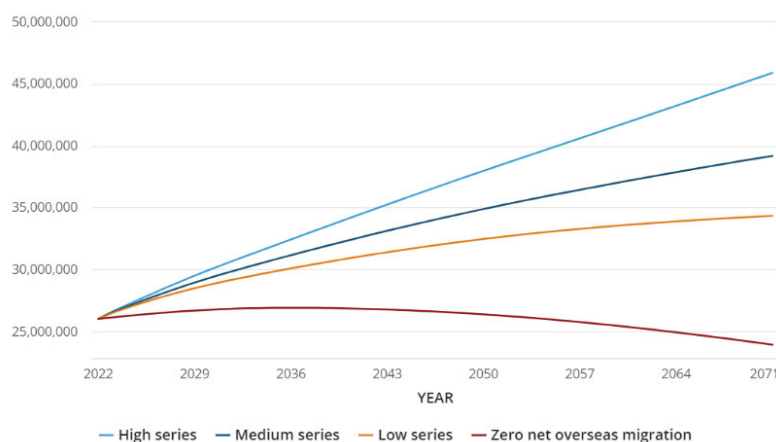
Table 1: National Production of Meat Chickens.



However, the population of Australia is expected to rise significantly and in a short time period.

Table 2: Projected Population, Australia (ABS)

Projected population, Australia



It is likely that Australia will continue to increase population at a rate which will be determined largely by the federal government, there being no practical difference between the two major parties on population policy.

On this basis it is estimated that at “medium” growth and accounting for loss of agricultural land near cities and planning issues, that the meat poultry industry will require up

to another 700 sheds within the next 20 years just to service domestic poultry consumption.

“On paper” Australian chicken should be a valuable export commodity. Australia is one of the very few countries producing white chicken meat (corn fed chicken meat takes on a yellowish hue), and Australia has an enviable and hard-fought “low disease” status. Chicken meat packs better than many seafoods and chicken feet is a sought after delicacy in many countries (and is a high % of Australia’s minute export market). There is clearly an opportunity to position Australian chicken as premium quality, versatile and acceptable to all religions in the large and rapidly emerging middle-classes of China, Malaysia, and India among others.

However, that Australia has never developed any significant export market for chicken meat has resulted in a particular dependence on the supermarkets as outlets for bulk chicken meat. The fast

food sector is overcrowded and declining slightly overall v supermarket/fresh food purchase since COVID; and increasingly “crowding the chicken piece or chicken burger out” with new and healthier options including sushi, salads and a wider variety of international foods including Mexican.

3.0 Chicken Meat and Supermarkets

Chicken meat occupies a large and increasing section of supermarket fresh meat aisles and a significant proportion of the secondary processed freezer section. Seen as a staple by consumers, chicken meat is presented as:

3.1 Fresh Product

- Whole birds frozen for roasting – the darling of 1950’s and 1960’s housewives for Sunday Roasts, this is now a minute proportion of sales.
- Whole birds fresh for roasting – more popular than frozen, but still a small market
- Whole pieces – by far the majority of sales are thigh, breast meat, and tenderloins, usually skin-off and may be deboned, in small and large packs
- Drumsticks, generally sold in bulk packs as less expensive options
- “Pet” and “stewing” pieces – necks, giblet and other organs, bones etc

3.2 Secondary processed product – refrigerated

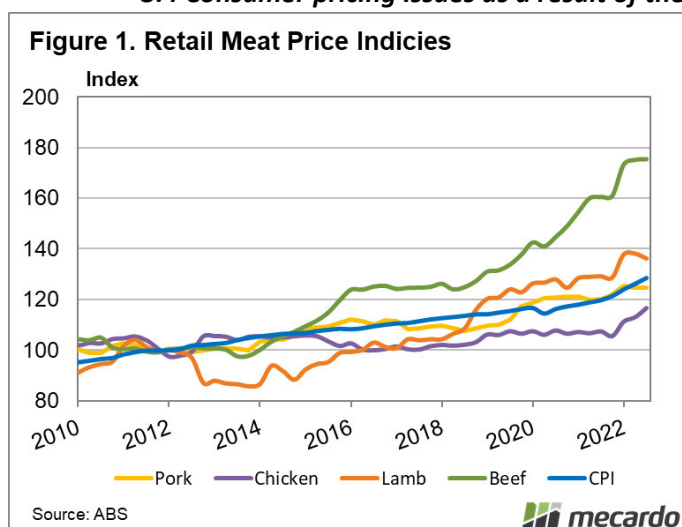
This rapidly growing sector seems to have new “experimental” entrants weekly and may include Kebabs, enchiladas, rolled roasts, schnitzels, nuggets, rissoles, mince, loaf, pulled, shredded, roast whole chicken (hot), Kievs, Maryland, Drumettes, Buffalo wings, patties, pre-cooked meal options eg butter chicken, and precooked sliced breast meat with a number of different herb and spice mixes. Originally primarily limited food service, these are increasingly offered in supermarkets.

3.3 Secondary processed product – Frozen

Beginning with Chicken Nuggets, this category is also significant in the supermarket and now includes “burgers” (patties), pre-cooked frozen meals, schnitzels, tenders, “chippies”, “buffalo wing dings”, crisp strips, precooked and frozen cuts etc breast, drumettes etc.

Virtually all of these are on offer in the supermarkets. It’s any wonder chicken is the most consumed meat in Australia!

3.4 Consumer pricing Issues as a result of the above



Poultry meat processors have been very proficient at matching domestic supply to demand in the short and over the very long term since the mid-1950’s.

Even while managing wide variations to some key farming inputs, particularly volatile grain and other feedstuff prices; poultry meat consumer pricing has been characterised by a remarkable degree of consistency over time. There is little to no seasonality of “boom-bust” pricing as per vegetables and fruit, and no climatic

seasonality of pricing as seen in beef and lamb (due to drought and wet-season changes in the national population). [Pic: Chicken meat price index rise post-COVID-19 is the smallest...](#)

Poultry meat processors are able to “play off” low grain prices due to glut, or wet seasons (results in less prime hard and more animal feed grade grain) to provide some buffer when grain prices are high (eg drought, or high % of national harvest as prime hard). (Note that poultry meat farmers have no such flexibility as they are carrying a significant % of the fixed costs of producing a chicken.)

This price stability has resulted in poultry meat being treated

- More like a grocery item than fresh produce
- As a staple food

As a result, there is a consumer expectation that prices will not fluctuate. Or rise, not even in the case of fixed cost rises (eg energy)

Supermarkets are clearly putting pressure on poultry meat processors to maintain this stance. Processors have become a mere proxy for the supermarkets resulting in almost unimaginable pressure on farmers.

4.0 Poultry meat industry - structure.

Poultry meat supply chains are markedly different from other agricultural industries in Australia.

Like many industries including dairy, supermarkets receiving poultry meat are serviced by processors as their source of product, rather than direct sale. In Australia, just two processors, Inghams and Baiada, control more than 90% of the total genetics for meat poultry and more than 99% of the genetics of turkey production.

Given the nearly 70% market power of the two major supermarkets, and that production supply consistently matches demand, it is fair to say that on paper there are no fundamental issues of countervailing power between *processors and supermarkets*, and in fact in terms of farmer negotiation, processors are effectively acting as proxies for the supermarkets.

That does not stop supermarkets “frightening” meat poultry processors daily with increased demands (eg RSPCA accreditation, “swap” to another processor etc). It appears that even though supply and demand are largely in balance, processors are frightened of exercising their considerable market power.

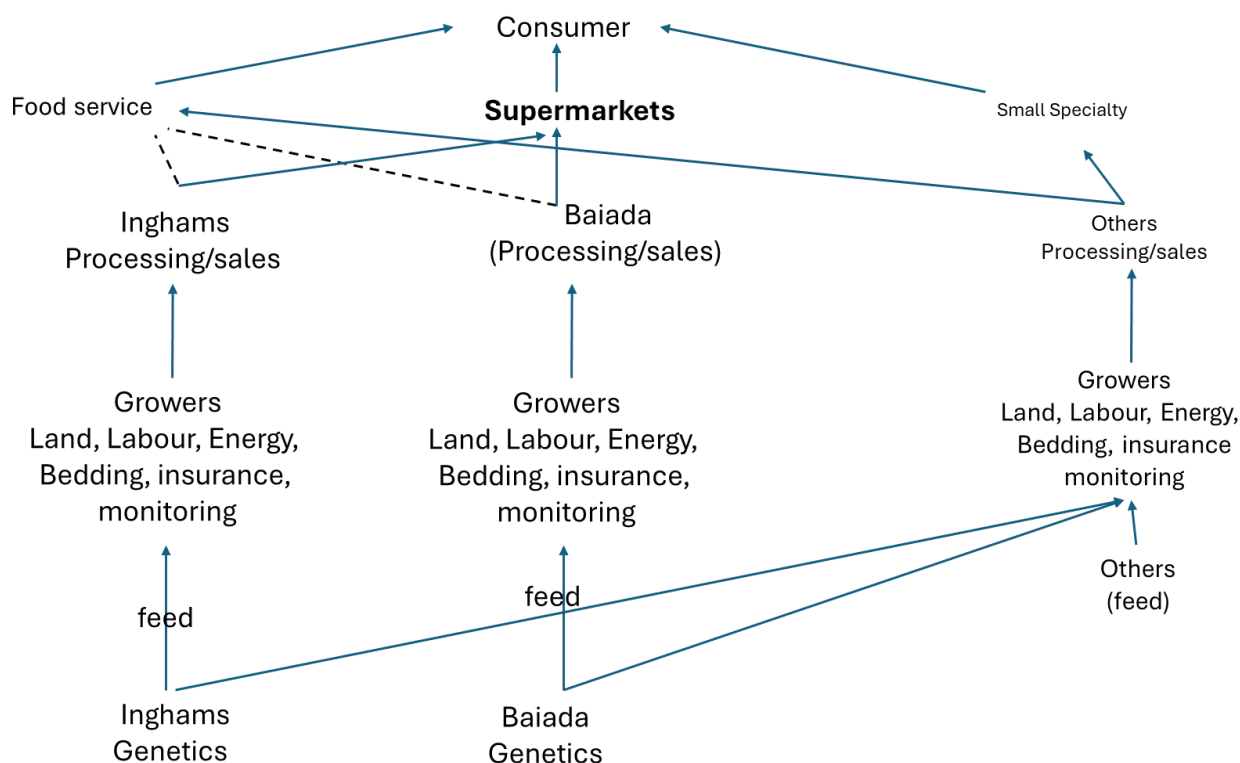


Fig 1: Flow chart of poultry meat supply chain showing grower “capture” by processors on both sides, and genetic control over “independents” held by processors.

Because processors own the “top” and “bottom” of the supply chain, poultry meat farmers are critical asset and service providers, but do not own the birds they care for and are thus tied to a single processor – in contract and in space, since the two processors have “divided” the country geographically. While being responsible for nearly 40% of sector asset investment, they represent less than 3% of retail price. This is very unlike the red meat sector where there are many buyers, (including export), many sellers (restaurants, butchers etc) and respectful relationships.

Poultry meat farmers are wedged within the supply chain with the processors on either side. As a result there are extraordinary pressures on farmers by processors who are acting as proxies for supermarkets, and most are now struggling economically.

The Value (or not) of RSPCA Accreditation

In the 10 years since this program was introduced, it is estimated that the RSPCA has earned \$20M/year, for no supermarket differentiation value, no premium price at checkout, so consumers don’t “win”.

Regular “inspections” cost farmers time and money for no additional return, only the threat that they will be terminated if they do not comply. So they don’t “win”.

Processors are hit with monitoring and investment cost, so they don’t “win”.

Most QA schemes have a reward attached, for the RSPCA scheme, it’s just penalties.

...and the Woolworths CEO received a parting package of \$24M

Poultry meat farmers are paid by the bird (averaging less than \$1/bird for chickens) or by the m²/annum. Most appear to be being paid by the bird. A small-medium chicken farm will on average stock 70,000 birds per batch (the largest farms in excess of 300,000 birds per batch) at an average 6.2 batches per year, but both these very widely depending on the processor’s needs.

The intensity of the activity on a meat poultry farm is greater than almost all other agricultural pursuits. Broadacre farmers have very intense planting and harvest periods, sheep farmers intense marking and shearing, but poultry meat farmers are night-and-daily, 365 days/year. Chicks/poults

must be kept alive and comfortable; growing birds gain weight evenly and daily; “pickup” birds are harvested in the middle of the night and in just 3-6 days the entire farm has to be emptied, scrubbed, disinfected and set up for tiny baby chicks/poults again. The tiniest problem can throw the whole timeline for both farmers and processors.

Meat poultry growing, due to the extremely high levels of capital investment in specialist equipment, exhibits different behaviour than other primary industries. There is no opportunity to “change the crop” to suit market conditions. Depreciation profiles of 20 years with high maintenance levels and reinvestment in additional technologies is characteristic. These attributes leave meat poultry farmers at a disadvantage compared to other farming enterprise. New technology farms have no other alternative use, making meat poultry farmers exquisitely vulnerable to victimisation and coercion.

5.0 History of competition and competition policy in the meat poultry industry in Australia.

Meat poultry farmers are captured contractually, geographically and financially by the processor to whom they contract. This has been worsening since the 1960’s and in the early 1990’s each state government enacted Countervailing Power Legislation to act as a mechanism to consider competition holistically and provide adequate negotiating power to meat poultry farmers while considering food safety, food security, biosecurity and farm improvement.

That this action of providing adequate countervailing power for those at the bottom of the supply chain **DID NOT** drive up consumer prices is adequately demonstrated by the graph of consumption of poultry (Table 1). Consumer demand for meat has always been price dependent, and there was no change in the linear rise in demand during the countervailing power legislation period. Significantly, farmers receive only about 3.2-3.8% of the retail price of chicken as their growing fee, to no consumer change was expected or seen. More significantly, farmers were able to reinvest into farm infrastructure, which has carried the industry to the period of about 2020-2024.

In the late 1990’s -early 2000’s, economic idealists developed the National Competition Policy, the Principles of which were introduced right across the economy- without any consideration of unintended consequences or regulatory support. As a result of this, all state-based meat poultry countervailing power legislation was abandoned, meat poultry farmers were left to “fend for themselves” and processors and supermarkets engaged in a “face to the bottom” in terms of payments, behaviour and negotiation with farmers.

That the action of removing adequate countervailing power for those meat poultry farmers at the bottom of the supply chain **DID NOT** drive down consumer prices is adequately demonstrated by the graph or consumption of poultry (Table 1). Consumer demand for meat has already been price dependent, and there was no change in the linear rise in demand after countervailing power legislation was repealed.

While the original National Competition Policy Principles undoubtedly resulted in considerably more competition in industries dominated by government, there have been significant and disastrous consequences in some industries as a result of the “free for all” that developed as a result.

ACGC firmly believes that competition is valued and valuable and National Competition Policies have value; but only so long as there is a strong regulatory framework behind it to deal with thuggery, aggression, coercion and victimisation that emerge as a result of unfair power imbalance and market concentration.

In the deliberate absence of a strong regulatory framework, the result has been not “a competitive market” in some sectors, but simple corporate thuggery designed to “take out” any competition by any tactic while hiding one’s own competitive inefficiency.

In the deliberate absence of a strong regulatory framework, coercion, not competition, has become the norm, particularly in the meat poultry industry. Since larger companies can coerce more efficiently through high priced lawyers, supply chain and other resource lockups, manipulation of supply contracts and blocking access to customers, smaller companies tend to be driven out of the market or taken over by the larger by force, not by competition. The result in so many industries has been a stable oligopoly driving excess profit, lack of innovation, and corporate inefficiency .

There is a frequent economic assumption that bigger is always better due to perceived economies of scale and this is certainly true in relation to buying power. However this applies less to family farms who tend not to cost their labour at market prices, work harder and longer than employees, and invest for the long term and not just the share price at the next AGM. Moreover, the economic assumption that bigger is always better tends to result in less competitive oligopolies, including in the meat poultry industry.

In the meat poultry industry this strong regulatory framework has been completely lacking. ACCC has been largely toothless in the meat poultry industry precisely because of the contractual, geographic and financial capture by processors. Speak up, and lose your business, your farm and your home. ACCC has proposed additional regulatory activity in the meat poultry industry, but the government has ignored the data so far, even though Mandatory Codes of Conduct are a feature of the Horticulture, Dairy, Sugar, Grain, industries and the Food and Grocery Code (in which meat poultry farmers cannot participate) is also converting to mandatory status.

- As a direct result of the National Competition Policy Principles, there is **LESS** competition in the meat poultry processing sector than there was prior to 2005 because of unmanaged and effectively unregulated processor consolidation.
- .
- As a direct result of the National Competition Policy Principles, there is arguably **LESS** competition in the supermarket sector than there was prior to 2005 because of unmanaged and effectively unregulated supermarket consolidation.

And in addition, **in the environment developed** by the National Competition Policy Principles, there has been:

- MORE geographic, contractual and financial capture of farmers by processors,
- LESS investment on farms (excluding a few selected new builds) around food safety, biosecurity, and public health, as farmers are squeezed beyond their costs of production and banks become shy about lending,
- FEWER new builds compared with the known and estimated meat poultry needs for the growing Australian population,
- Nearly 25% of ALL farms for sale because the financials no longer stack up, as a result of thuggery by processors and supermarkets,

- A perfect duopoly in the turkey market as a result of genetics takeover by the two major processors, using their power to drive independent turkey producers out of the market completely, hindering innovation into secondary processed products, and eliminating any option for turkey meat export.
- NO sharing of growth and productivity information between farms as there is in the beef cattle and sheep industries, because meat poultry farmers exist in a dystopian “Hunger Games” contractual pool structure which is supposed to be about competition between farmers but is actually just another way for processors to manipulate and control farmers as they manipulate the inputs at will - both accidentally and deliberately,
- NO competition by processors for “good” farmers, as a result of geographic carve-up and market domination by processors,
- LESS efficient use of national resources as “old” but functional and highly efficient (and fully depreciated) farms are driven out of contract after years of low returns just because they are “old”; and so lie empty, while new farms are built further from cities, with increased pressure on rural water supplies and high transport and labour costs.
- CAPTURE of profitability in the processing and supermarket sectors at the expense of suppliers, because of the anti-competitive market power of highly oligopolistic markets (in the case of meat poultry 2 major processors and 2 major retailers).
- NEGATIVE socioeconomic effects including reduced introduction of new technologies, bankruptcies for reasons other than economic efficiency, and increased transaction costs. The possibility that processors gain “personal” benefit from forcing farms into bankruptcy and then purchasing these farms at below asset value cannot be ignored.
- LESS information flow as companies at all levels hide behind “commercial in confidence”, recognising that information is power and that information flow decreased the ability to drive the hardest bargain. Information flow is critical for the operation of competitive markets.
- RISK TRANSFER from supermarkets to processors and processors to farmers, because they can.
- LESS investment in developing international trade by the oligopolistic processors, because they control the Australian market completely and have ridden the wave of increased domestic population to grow their businesses.

Importantly, unlike in the Horticulture, Grains, Sugar and Dairy industries, the meat poultry industry has NO countervailing power instruments as per the other industries’ Mandatory Codes of Practice.

Without a mandatory Code to provide countervailing power, it will always be easier and more convenient for processors (as proxies for supermarkets) to victimise farmers than to open new markets and compete efficiently.

Notably, the Prime Minister has now announced (Sept 2024) that the Food and Grocery Code of Conduct will become mandatory. This is a recognition of all the issues above as they apply to the

relationship between processors and supermarkets in the supply of groceries to consumers. It is a recognition that there must be a strong regulatory backing to a competitive market.

However, this action in itself is likely to provide a worse situation for meat poultry farmers. As the only group in the supply chain that will be without “rules of engagement” in the form of a mandatory Code, the situation for farmers is likely to become even more dire as both supermarkets and processors try to drive their costs and risks back down the supply chain.

It is worth noting that NO company has a responsibility to compete fairly under the current regulatory regime save the rules imposed by the Australian Consumer law; further underlining the need for a strong regulatory framework behind competition policy. Rarely mentioned in relation to business behaviour, the key drivers for each element have no relationship to fair competition or the consumer or those at the bottom of the supply chain:

- Under the shareholder primacy theory, the supermarkets’ Boards’ key responsibility is to their shareholders to act in the best interests of the corporation, in other words to “maximise value to shareholders”. The time period is not defined, but is generally assumed by Boards to be in the short run and not the long run. Therefore, it appears to be OK (indeed, encouraged!) to price gouge, exploit supplier relationships, withhold key information, block legitimate competition, smash cultural boundaries and risk transfer to those further down the supply chain in the name of short-term boosts to shareholder wealth at the expense of legitimate competition. This has been amply illustrated in other industries as well, including Qantas (airlines), AMP (financial services), BHP (mining) and meat poultry. That any “penalties” imposed for these behaviours have been minute provides a clear message from government that this behaviour is acceptable and expected.
- At processor level, they are squeezed by the supermarkets due to the above, and in addition Inghams is a public company (see notes above) and Baiada seeking investors and hence wanting to demonstrate “modern” and “efficient” management tactics. So they too engage in the behaviours above, to the direct detriment of meat poultry farmers who have the day to day responsibility for biosecurity, food safety and a part responsibility for food security.

Farmers have no ability to countervail these behaviours because they do not have critical mass, even as an authorisation group. Moreover, the unique specialisation of these farms further invites exploitation by those further up the chain.

6.0 Nature of Competition Failure and Market Failure Issues between Processors and Farmers in the Meat Poultry Industry.

Because of the economic, contractual and geographic capture of meat poultry farmers by their processor, there is a well recorded history of poor business relationships between most processors and their farmers going back decades - a relationship which substantially worsened after removal of the state Countervailing power legislation and worsened again after Inghams was the first of the two major processing companies to be publicly listed in around 2015.

Market failure (failure of competition) has been documented to occur in many ways, including but not limited to:

- Processors are not threatened by competition from new entrants or expansion of other firms and thus have a diminished incentive to innovate or invest in more cost-effective production methods. This can be seen in the poultry meat supply chain, where processors have few incentives to drive growth into more profitable secondary markets, potentially including international trade, but place significant pressure on farmers to reduce their cost of production through the pooled pricing mechanism, chasing primarily low profitability volume markets. This is especially visible in the turkey market, where two processors own 99.9% of production.
- This oligopsony, (a market with a small number of buyers), leads to imbalanced price pressures on producers and reduced transparency, further diminishing competition. In the poultry meat supply chain, processors gather and aggregate more information about market conditions to which farmers have no access, putting them in a better position to manage risk.

This has lead to:

- Increased difficulty for farmers to make informed decisions about their options,
- Risk shifting from processor to farmer, for example, forcing the farmer to carry insurance for the birds - which are owned by the processor. For example, forcing farmers to carry the cost burden of emergency diseases while the processor pockets both the industry compensation and has the opportunity to grow additional birds in unaffected farms - essentially profiting from emergency disease responses,
- Processor bargaining advantage due to almost complete information related to costs and the value of products at the wholesale level, and farmers have none,
- Owing to information failures, farmers cannot accurately make investment or resource allocation decisions,
- In the face of diminishing farmers' margins, they have less capacity to respond to future disruptions, climate impacts and natural disasters when they occur,
- Farmers are experiencing significantly increasing input costs and rising costs of energy and labour, while prices received are not increasing,
- Industry participants are reluctant to report concerning supermarket conduct, for fear of retribution.

In addition, processors have virtually complete control over the contract conditions offered to the farmers. This includes but is not limited to:

- Poultry meat growing contracts that allow processors to unilaterally alter farmers' batch densities and stocking rates, which greatly impacts farmers' incomes, beyond that which already exists via the "pool" system.
- In certain regions in the poultry meat industry, processors reportedly have leveraged their monopsony position to decrease farmers' prices mid-contract, causing farmers to forgo benefits that the contract otherwise entitled them to.

- Processors forcing farmers to make “farm improvements” - sometimes mid-contract or as a condition of entering into a renewal contract, and then reducing the fee for service by the amount of the savings the farmer has accrued as a result of the investment - without consideration of depreciation.
- Poultry meat growing contracts that allow processors to unilaterally alter farmers’ batch densities and stocking rates, which greatly impacts producer’s incomes, beyond that which already exists via the “pool” system.
- Contract terms (durations) that do not allow the farmer sufficient time to amortise capital expenditure or obtain returns on investment;
- Contract terms that can be altered by the processor based on “inefficiency” or with termination clauses (e.g. on importation of poultry meat), which effectively render any current contract period useless.
- Clauses that require the farmer to hold licensing, rights, or insurance above their usual requirements. This includes full-replacement insurance policies covering property that is held on the farmer’s premises but owned by the contract-issuing party or recently a requirement to hold water rights above that required for the farm;
- Clauses that require farmers to provide evidence of processors’ contractors complying with a wide range of processor-established codes of conduct and over which the farmer has no responsibility;
- Clauses that require the farmer to pay a financial penalty when certain misadventures occur, where the method for calculating the amount of these penalties is not disclosed to the farmer and whether or not the issue is caused, or even potentially caused, by the farmer,
- Asymmetric clauses restrict the farmer from assigning their contract without similar requirements placed on the contract-issuing party, essentially blocking farm sales “at will”;
- An absence of clauses that offer effective or affordable dispute resolution processes;
- An absence of clauses that enable farmers, as unsecured creditors, to recoup losses should the processor become insolvent or even change their business model;
- Clauses set prices according to a farmer’s performance relative to other farmers, where that performance is often determined by the price or quality of inputs over which the farmer has no control. ‘Inefficient’ or ‘below average’ performance – as judged by the criteria of the processor – is grounds for reducing the price payable or terminating the contract – see section on *The Pooling System*;
- Unilateral termination clauses which allow the processor to terminate the contract with inadequate notice and for reasons such as legislative changes, general economic pressures, or closure of facilities owned by the contract-issuing party;
- Clauses that require the farmer to comply with internal standards designed by the processor or external standards designed by a non-government organisation. The standards may change

during the term of the contract, and any breach may result in the contract being terminated and

- Complex pricing clauses enable the processor to change prices unilaterally and retrospectively.

All these issues were highlighted in the ACCC Perishable Agricultural Goods Inquiry (PAG) which recommended increased regulatory focus in the area of meat poultry. As a result, DAFF funded a report on options for the industry, which has recommended a mandatory Code of Conduct for the meat poultry industry.

National Competition Policy has not only not worked for meat poultry farmers, but has resulted in all these anti-competitive market failures. Current regulation via ACCC has failed, even after the change to the ACL in 2022, because in all cases there is reliance on a complaint, and any meat poultry farmer who makes a complaint loses his/her business, farm and home. Even with class exemption authorisation, there are not enough “teeth” in the regulation of the meat poultry industry to provide any semblance of countervailing power. Without countervailing power, market failure and failure of competition occur and have done so.

The meat poultry sector needs a Mandatory Code of Practice - urgently.

7.0 ACCC response to these competition issues in the meat poultry industry

The ACCC formed the view at the PAG that several terms may raise concerns under the unfair contract term laws. These contracts contain types of terms the ACCC has previously considered unfair in other PAG industries, such as those allowing unilateral variation to contract factors that can impact price and unbalanced or short termination timeframes.

Following this, the ACCC has examined a number of industry contracts at the behest of the processors. There are a number of cases where processors provided one or a group of specific contract conditions to the ACCC and as a result of examination altered them, and then the processors falsely represented to the farmers that ACCC had “approved the [entire] contracts”.

ACCC has worked with the farmers both in the introduction of the changes to the ACL in late 2022, and then by allowing class exemptions for groups of processor’s farmers. However, they also admit that farmers are unlikely to be able to report unconscionable behaviour due to the risk of victimisation and the issues with the interpretation of these contracts in the field.

That this behaviour occurs, and continues to occur, in the face of National Competition Policy Principles, and the lack of competition and inefficiency that arises from these behaviours, underlines that while National Competition Policy has significant value, it will be corrupted without a strong and effective regulatory system to enforce correct behaviours and keep the eyes of business focused on competition and not simply thuggery to hide inefficiency.

It is clear that the meat poultry industry needs a mandatory Code of Conduct to support National Competition Standards.

8.0 SPECIFIC RESPONSES TO ISSUES RAISED IN THE CONSULTATION PAPER.

8.1 Legislation Review Principle

Question 1: Is the Legislation Review Principle and its implementation effectively ensuring regulation does not restrict competition unless it is in the public interest? If so, how? If not, why not?

2. Are changes required to the Legislation Review Principle or its implementation to make it more effective and/or to address new challenges. If yes, what changes could be made?

The following comments are relevant:

- All legislation/regulation should be reviewed at suitable intervals, not only anything deemed to be “restricting competition”. Trading conditions are changing rapidly and that which may not have restricted competition at the time of implementation may be now.
- The interval should be determined according to the nature of the legislation. For example, a mandatory Code of Conduct for an industry that determines a contract period of 10 years should not be reviewed any earlier than 10 years to allow confidence in investment, unless there is a major change requiring an emergency interim review. Legislation that results in investment with a 20 year depreciation period should ideally not be reviewed for that period, or should “grandfather” any prior investments if reviews are conducted in the interim.
- The most significant barriers to competition in the meat poultry, in the absence of a Mandatory Code of Conduct which is urgently needed, lie in legislation enacted at state level. Environmental Protection legislation is a significant barrier to competition in all states and should be brought into the federal sphere. Some planning instruments are equally competition-restricting. It is worth noting that while there is currently little importation of meat poultry for biosecurity (disease) reasons, any reasonable benchmarking of costs of production highlight environmental, planning, and water laws as competition restricting.
- The “public interest” has traditionally been narrowly defined as “cheap to buy at the supermarket”. As a result of this narrow and erroneous view, critically important issues including investment in carbon reduction/climate change response, investment in biosecurity against encroaching diseases, ongoing investment in food safety, even investment in ensuring supply in a crisis has been completely ignored. This is a really significant problem for the meat poultry industry as the “race to the bottom” of thrashing farmers and not paying their real cost of production has resulted in a finely balanced, too-easy-to-fail-in-a-crisis supply chain that is now beginning to crumble in terms of supply and quality, as a direct result of the market failures cause by National Competition Policy and lack of countervailing instruments such as a mandatory Code of Practice.

8.2 Competitive Neutrality Principle

3. Has the Competitive Neutrality Principle been effective in supporting competition?

4. Do the Competitive Neutrality Principle and jurisdictions’ related policies that flow from the Principle:

- *Capture the right government business activities?*
- *Appropriately address government advantages and disadvantages to support competition?*
- *If not, what changes could be made to improve the Principle?*

The following comments are relevant:

- Government is needed to overcome market failure. If there had been no market failure there would have been no need for government to have stepped in in the first place.
- Opening up government services to “competition” has in many industries (eg aged care, hospitals, NDIS) simply resulted in government subsidising the profit margins and shareholder dividends for privately listed companies without consideration of “competition” or even standards - resulting in increased costs for government, appallingly poor regulation and resulting in a plethora of “upper management” layers for many companies that only exist because of these subsidies.
- At the other end, government failure to provide a strong regulatory support for competitive of potentially competitive industries eg a mandatory Code of Conduct for the meat poultry industry, or a Mandatory Code of Conduct for the supermarket industry, has simply resulted in inappropriate and non-competitive downward pressure on supply chains to the direct loss-making detriment of those who actually produce food.
- Competitive neutrality should only be an aim where there is a strong regulatory underpinning
- Competitive neutrality can only be achieved where there is a free and transparent flow of information between all parties in a supply chain. Otherwise this principle tends to entrench market failure.

ACGC reiterates that competition is valued and valuable and National Competition Policies have value; but only so long as there is a strong regulatory framework behind it to deal with thuggery, aggression, coercion and victimisation that emerge as a result of unfair power imbalance and market concentration.

8.3 Structural Reform of Public Monopolies Principle

5. Has the Structural Reform Principle been effective in introducing competition to sectors traditionally supplied by a public monopoly? If so, how? If not, why not?

6. Do you think any potential changes to the Structural Reform Principle or its implementation should be considered? If so, what are those changes and why are they important?

In many sectors, a potential or actual public monopoly has simply given way to a stable oligopoly with monopolistic behaviours. For example, the “big 4” banks, led by the previously-government-owned Commonwealth Bank, show no real competition even though there is no evidence of actual collusion.

Similarly with gas supply, insurance and electricity, in the absence of disruptors a government-led monopoly becomes a stable and uncompetitive oligopoly. ALL these sectors are significantly over-represented in excessive price rises as a result.

In the private sector, there are similar structural weaknesses in the Mergers legislation/activities, who by taking a narrow or skewed view of “competition” have actually

formed stable and non-competitive oligopolies, and this includes in the meat poultry sector and particularly in turkey meat.

8.4 Access to Services Provided by Means of Significant Infrastructure Facilities Principle

7. Has the Access Principle been operating effectively? If not, why not?

8. Are there any issues with the Access Principle that have not been identified in this paper?

9. Do you think any potential changes to the Access Principle or its implementation should be considered? What are they and why are they important?

We have no comment on this principle other than to note that even with the access, rural and regional Australia often has no or little access to the alternative players. Even 90km from Sydney, for example, Vodaphone provides no coverage.

8.5 Prices Oversight of Government Business Enterprises Principle

10. Has the Prices Oversight Principle and its implementation been effective?

11. Are changes required to the Prices Oversight Principle to make it more effective and/or to address new challenges? If so, what changes could be made and why?

Price information is a critical issue for the meat poultry issue, and the following comments are relevant:

- Lack of price transparency in the meat poultry supply chain is a major contributor to the market failure in this sector. Pricing data in this chain is one-sided ie supermarkets can and do have close vision on processor's costs through ongoing negotiations and demands. Processors have very close vision on farmer's costs through modelling and regular demands to "see farmers' books". Farmers have no such visibility at any point in the supply chain and as a result are uniquely vulnerable to coercion and victimisation, including actual termination of contracts for fallacious reasons, usually accompanied by an "if you don't like it, meet me in court" exhortation from the processor who is well aware of the power imbalance.
- Prices oversight agencies in those states that have them are generally a simple "rubber stamp" for any claim made by the protagonist. As a result farmers have seen ludicrous Council rate rises on the back of pathetically poor financial management by Councils with no effective oversight.
- Price oversight mechanisms done little more than publicly announce the "non-collusion" that exists in industries that, as a result of National Competition Principles, have developed into highly profitable stable oligopolies by "killing off the competition". The fuel industry, electricity industry, gas industry, banking industry, insurance industry, and other cost-of-business necessities for meat poultry farmers all note the relative lack of competition in these sectors. Many of these businesses seem "comfortable" focusing on shareholder returns and not competition for clients or market share. ACGC is not alleging actual collusion in these industries, simply lack of competition, in part caused by deliberate complexity that makes switching difficult. Something akin to Unit Pricing in these industries would assist meat poultry farmers make choices, but it is worth noting that there is little real competition in these sectors.
- At commonwealth level, meat poultry farmers are effectively subject to the cost-recovery imposed by the APVMA on farm chemicals. This agency relies on "cost recovery" and imposes significant costs on all farming industry as a result; but does nothing to improve

efficiency or reduce or even manage costs. Acceptance of overseas reviews, risk matrix development to reduce the workload on companion animal medicines while maintaining focus on trade/livestock/residues, acceptance of TGA toxicology reviews, harmonisation with like-agencies (by product, sector or species) are all realisable efficiencies, but APVMA consistently resists them.

- At commonwealth level, meat poultry farmers are subject to the shared costs of managing emergency diseases through EADRA, most notably Avian Influenza High-path strains (HPAI). The recent outbreaks in NSW/Vic/ACT resulted in clean-up costs of \$10-12M PER FARM, which is appalling and reeks of state and federal government monopolistic behaviour. There was no tendering, no forward contracting, no budgeting, no consideration of alternatives, just “here is a bill and that includes the toilet paper”. We are advised that one state government paid more than 3 times the approved rate for contractors. The industry can, and would undertake disposal and clean-up much more efficiently but is restricted from same by overcharging state governments, barrier-imposing EPA's, failure to recognise new technology, politics and fear of media (when human health is at risk). This issue MUST be renegotiated to operate entirely as a federal scheme with state government input, and not the hugely inefficient and complex system operating at present.

8.6 Public Interest Test

12. Has the ‘public interest test’ in the Principles been effective?

13. Are changes required to the ‘public interest test’ in the Principles to make it more effective? If so, what changes could be made and why?

- This test has failed. It lacks transparency and appears to apply equal weighting to each of the identified elements (which would by reason differ according to the industry or sector being considered). It gives no consideration to the different needs of urban or rural/regional Australians and no consideration of the importance of producing *food*. For example, the current issue in the meat poultry industry about “below potential cost of production” payments to farmers by processors is that there is no consideration of the investment cost of biosecurity, food security or food safety - all critical to the health and basic welfare of Australians.
- ACGC agrees that there is no appeal mechanism - in other words, if you can sneak your competitive inefficiencies past an “IPART” (or equivalent) with a good submission and fancy words there is no ability for other companies to question your submission.
- The test has also failed in that almost nobody outside the industry knows when a public interest test occurs until after the decision is made. Stakeholder lists do not appear to be kept nor stakeholders actively consulted. (The same applies to this review, we were notified of its existence on 27th Sept 2024)
- We agree that the public interest test should be risk-weighted, simpler, transparent and published and have a 30-60 appeals period after publication.

8.7 Format of the Principles

14 Is the format of the Principles in the CPA user-friendly?

15. In your experience, are there any issues related to the format of the Principles that have not been identified and should be considered?

16. Are changes required to the format and/or drafting style of the Principles to make them more user-friendly? If so, what changes could be made and why?

ACGC has no comment on this principle. Until and unless we discovered this review, we would not have been able to find the current ones, even though they affect meat poultry farmers' cost structures directly.

8.8 A Clear Purpose

17. Should the Principles include a purpose statement/principle?

18. In your experience, are there any issues related to purpose statement/principle that have not been identified and should be considered?

19. What considerations should be taken into account in drafting and implementing a purpose statement/principle?

Comment as above in 8.7

8.9 Promoting Competition

20. Should the Principles include a requirement to promote competition?

21. In your experience, are there any issues related to promoting competition through the Principles that have not been identified and should be considered?

22. What considerations should be taken into account in drafting and implementing a requirement to promote competition?

It would seem logical that the National Competition Policy Principles include a requirement to promote competition - ideally without the issues identified above. There MUST be a strong regulatory underpinning to avoid the skews and market failure we are currently experiencing as a result of the current NCPP.

8.10 Consumer Empowerment

23. Should the Principles promote 'consumer empowerment' or the 'demand-side' of competition? What are the costs and benefits?

24. In your experience, are there any issues related to promoting consumer empowerment or the 'demand-side' that have not been identified and should be considered?

25. What considerations should be taken into account in drafting and implementing a requirement to promote competition?

"Consumers" have no access to information at all, and are skewed in their views (or in government *interpretation* of their views) by marketing, misinformation, disinformation, and fashion. Consumer behaviour also does not match their stated aims.

For example, when polled, Consumers seem to have been convinced by marketing of the "animal welfare" benefits of organic &/or free range meat poultry - regardless of any science

based peer reviewed and quality studies proving the opposite. However, when consumers actually *purchase* product, it is usually the barn/conventionally reared product that they purchase for price reasons. (This is, of course, a testament to food safety and actual animal welfare standards administered by the government and trusted agencies). So actually identifying consumer desires is impossible and misleading and this should not be included at the risk of fracturing “consumers” and inviting activism and lobbying on various causes.

The “Community” is the supposed beneficiary of the entire NCPP scheme and as such does not need an additional “demand side” element for consideration. To do so would also raise the issues of

- short and longer term value to the community (eg allowing prices to rise for climate change reasons has little value now, but plenty to the following generation);
- to *which* community should the benefit accrue (browbeaten meat poultry farmers are “community” too!), and
- how to address the needs and wants of various communities under public/media glare.

As an alternative, the proposed increases in elements considered, weightings and the appeals mechanisms should adequately cover any widespread community concerns.

8.11 Market Design and Stewardship

26 Should a market design and stewardship principle be incorporated into the Principles?

What are the costs and benefits?

27. In your experience, are there any issues related to market design and stewardship that have not been identified and should be considered?

28. What considerations should be taken into account in drafting and implementing a market design and stewardship principle?

There is no need for government to design markets, nor including this into the Principles. Government is by nature politically driven, risk averse, costly, and at the present moment government cannot keep up with regulation of new markets, muchless design them.

BUT noting that Competition policy only works properly when there is a strong regulatory environment underpinning it, then developing appropriate regulation of new markets is appropriate to ensure that market failure is not entrenched into new markets from the beginning. (eg Google and Facebook monopolistic behaviour went too far before regulation and only the EU has been successful in that space so far), and the meat poultry industry behaviours by processors have gone far too far without a Mandatory Code of Conduct to mitigate offensive and non-competitive behaviours.

8.12 Facilitating Competition through Data Sharing

29. Should data sharing be incorporated into the Principles? What are the costs and benefits?

30. In your experience, are there any issues related to data sharing that have not been identified and should be considered?

31. What considerations should be taken into account in drafting and implementing a data sharing principle?

Data is the key element to identification and action on market failure, particularly in the competition space, and ACGC supports data sharing wherever possible, noting that meat poultry farmers are currently forced to share almost all their data with their processors but

the reverse is not the case. Balancing this is one element of the proposed Mandatory Code of Conduct.

8.13 Reform Themes

32. Do the reform themes adequately capture existing and emerging competition issues? Are there any additional objectives under each theme that you consider are important to improve community outcomes? What would you change?

33. What specific reform actions could governments pursue in the National Competition Reform Agenda? What are the potential benefits and costs?

A direct response from an ACGC member on this issue:

"Reform theme 1 recognises the need for a more dynamic business environment.

What we could say that in any 'linked' business strategy requires all in the supply chain "silo" (like the meat poultry industry or PMI) to have a proportional say and outcomes to be somewhat balanced. We could bring in the importance of poultry meat (at 50% of consumed meat protein) in our society / economy in terms of price, environment and health outcomes. Sectors will not function well / become dynamic and inventive when there is a marked imbalance of power.

Similarly (while not advocating a protectionist approach to business) risk factors also have to be 'shared and balanced' by all in the silo. Putting up 40% of a silo's capital must be balanced with appropriate contract terms and pricing that reflects that the PMI is capital intensive, the capital asset physically erodes more quickly than in other industries and a large portion of our capital input has virtually no other alternate use. The current contract term does not even fit the 60% borrowings a start up enterprise might enter with a bank let alone service the family financial inputs. This requires a quite unique financial model that both silo partners above us - processors and retailers - do not cater for and refuse to discuss reaching a balanced outcome. The silo can only work when all parts of the silo are healthy. If one element of a silo breaks down we lose but so does the Australian consumer, the environment and Australia's productivity ranking. (Use Chicken at 50+% meat protein consumption and in broad EU environmental terms with the lowest number being the best Beef 28 Lamb 25 Pork 9-15 (depending on whether wet or processed), chicken at 4.5 to 5.5).

If we have a short term contract on a new site inside the 20 years we need to redeem capital expenditures and satisfy the bank lending then if the contract is not renewed we are left with a large debt / mortgage repayment AND significant remediation costs because of the 'single use' capital. Remediation example could be taking up and removing 12 x 16m x180m concrete flooring slabs - a seven figure sum!

As our industry improves towards net zero, improves its environmental footprint, improves animal welfare, better caters for biosecurity threats, improves productivity we find the least powerful in the business loop / silo ends up paying for it that is the farmer despite what is written in a contract because those above in the food silo have the power imbalance to force it. If a factual / technical error is in the contract it is not corrected immediately but only after protracted discussions and then is only applied to forward business transactions (ie no 'make up' payment is offered). Similarly we lose up to a year in additional incremental costs with CPI adjustments in arrears and then it is discounted by 50%. We are currently looking at both water supply and biosecurity up grades but the cost of these items are being borne by the farmer - again despite what the contract says.

Competition gains and the lowering of prices in real terms should not be an unfair business expense / wealth transfer against the least empowered".

8.14 Supporting implementation of the NCRA and revitalised Principles

34 What institutional, governance and other arrangements, including mechanisms to share the economic growth and revenue benefits of reforms, would best support the implementation phase of a revitalised NCP?

35. What institutional arrangements would best support continued adherence to the competition principles beyond the end of the 10-year reform agenda?

The most notable issue involved in the implementation of the previous NCP was the glee and abandon with which economists within government agencies leapt into action - with poor consultation, wholesaler abandonment of legislation and other regulation, with little to no concept of unintended consequences, no "safety nets" or transition periods in many cases, including in the meat poultry sector.

That resulted in farmer confusion and significant vulnerability, bank financing issues as processor thuggery proceeded apace, unconscionable contracts, and slowing of investment. Between 2007 and 2015 this largely recovered, but since 2015 has been a "race to the bottom for farmers' growing fees" as Inghams in particular has had to please hungry shareholders.

The two major processors were perhaps a little slow to copy the vindictive and coercive techniques used by their counterparts in the USA or the tactics used in other industries (including the "gig" economy) but at 2024 the net result has been

- the highest rate of farms for sale in the history of the industry,
- slow farm building programs in the face of 1M additional population in Australia in 2024 alone,
- the highest level of farmer: processor conflict and dissatisfaction in the history of the industry
- contract negotiations not being complete in a 5-year period (a huge waste of resources)
- rise in the rate of emergency disease declarations
- lowest level of on-farm investment in the history of the industry
- questions surrounding food safety and longer term food security

Clearly this industry urgently needs a mandatory Code of Conduct that meets the requirements of any new NCP, but in the meantime it's worth noting that there should be a suitable transition period for any new NCP Principles that allows suitable time for adjustment and organisation.

Yours Faithfully,

(by electronic transmission)

[Redacted Signature]

30 Sept 2024.