

Hon Dr Craig Emerson
C/- Food and Grocery Code Review
(by email)

Dear Dr Emerson,

RE: Independent Review of the Food and Grocery Code of Conduct 2023–24

Please accept the analysis below as our submission toward this Code Review.

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 interchangeably) 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.

The Meat Poultry Industry - Statistics

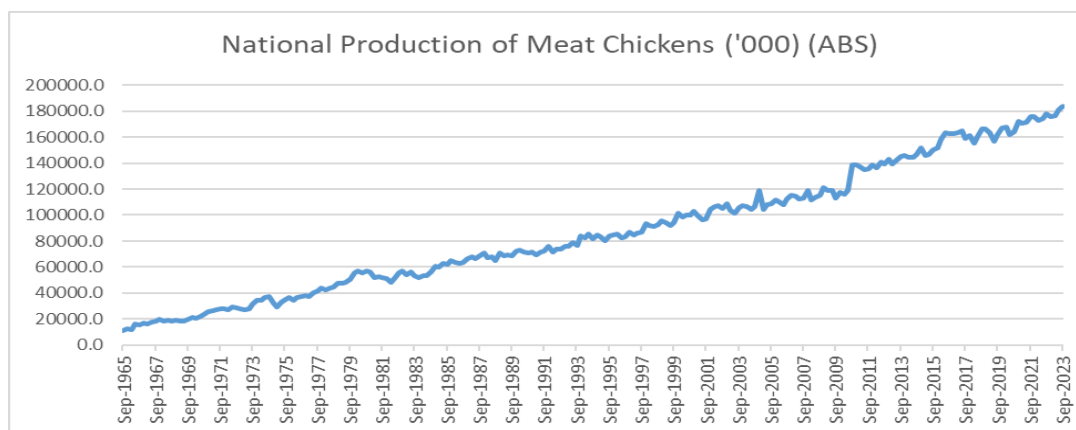
Meat poultry includes meat chickens, turkeys, ducks and specialty birds (eg spatchcock, quail etc). Because few statistics are kept other than for chickens, only chickens will be considered below.

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. ([ACMF](#)). Meat chicken farms are the most efficient producers of animal meat protein per year, on a kg/ha farmed basis.

Chicken 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 1.50kg feed per kg of meat produced and water use (including for cooling) around ¼ of that of beef.

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.

National Meat Chicken production has risen steadily with population. More than 97% of 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 on the back of high red meat prices.



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Because processors own the “top” and “bottom” of the supply chain, meat poultry 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.

Meat poultry 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.

A Failure of Competition and Failure of the Market

Example 1: Growers currently receive around \$1 growing fee for a bird of around 3.0 kg, or around 33c per kg. A whole roast chicken from the supermarket, which is one of the **least-cost** poultry presentations, is around \$12/bird (Coles). So at best, growers are currently receiving, on average, **less than 4% of retail chicken cost. BUT...**

That \$12 bird is around 1.65kg, or around \$7.27/kg. *Note that prime chicken cuts (breasts, thighs), which represent the majority of bird weight, retail for as much as \$17/kg (Coles).*

Secondary processed product, which uses small volumes of lesser chicken cuts bulked out with other ingredients (eg nuggets, tenders etc) can retail for \$11/kg (Coles) or more.

So the average “take home” for the farmer is around 2.7% of retail cost.

There is no doubt that there is market failure in the supermarket sector and this is not confined to Australia – in 2016 the United Nations Conference on Trade and Development ([TD/B/C.I/CLP/38](#)) noted that this was the case in many OECD countries leading to “*abusive and unfair practices difficult to counter through competition law*”. The same report also notes that:

“Anti-competitive practices of supermarkets are widespread, simultaneous and multifaceted, pointing to a structural market failure”

In the poultry meat sector, with two major poultry meat processors controlling more than 90% of Australia’s meat poultry genetics; with two major supermarkets controlling around 70% of food and grocery retail; and with production virtually perfectly matching demand and very constant over time; there is clear countervailing power in the Food and Grocery market between *processors and supermarkets* in relation to meat poultry. This is an even

better matched countervailing power than the government noted when it was introducing a mandatory Code of Conduct for the *Dairy Industry*. Having noted that, processors are still harangued by supermarkets daily, as there is no alternative export market to take meat poultry produce, unlike red meat.

Just like the dairy farmers and as a result of the above, this power has resulted in the processors becoming a proxy for the supermarkets – by thuggish business behaviour towards growers who are trapped geographically and economically to a greater degree than dairy farmers ever were.

Traditionally, small businesses including farmers concentrate on turnover rather than profit, and depreciation as an abstract accounting concept is poorly understood. Meat poultry growing has been seen by a significant number of people wanting career change (particularly city dwellers:) in the same way as franchising is seen by many inexperienced business people as a “safe” business.

Thus farms traditionally have been able to be sold and new chicken housing built. And so the processors, by means of intensely complex contracts and bullying negotiating tactics along with very

public removal of appointed grower representatives; have been able to effectively accumulate over time the farmers’ profit margin, then their depreciation, and eventually the capital gains on land. The result is an effective subsidy of the supply chain by growers.



Pic: how things stack up against meat chicken farmers in the poultry industry.

This has progressed to the point that even some corporate farms have stopped or slowed their shed building programs, farms are being sold up, farmers have lost their superannuation, and processors are now contracting some old and poorly maintained farms just to manage their throughput. However, this has not so far stopped processors offering unconscionable contracts to current growers and enticing new farmers to move further from cities, increasing “food miles”.

While ever there was another ex-employee who wanted to “go bush” and “buy an income”, or another corporate willing to build shedding, all was OK. (A similar model has played out in the retail mall sector). Both have reached their limit – new meat poultry shedding construction has slowed in the face of a rapidly increasing population and increased demand for poultry meat as food.

Thus, the low retail prices of chicken meat to consumers are effectively subsidised by growers.

This pattern also appeared in the dairy and horticultural industries, in both cases the Australian government response was a mandatory Code of Conduct. This is critically needed but there has yet to be any commitment by the government for meat poultry growers.

In the last 2 years, the average price of the most popular chicken cuts has risen at more than \$2/kg, or around 18%. BUT farmers have had no price rise in spite of rising costs. The Fels report (2024) identified this clearly (table 1)

Note that automotive fuel, gas, electricity, and insurance are key inputs for farmers. BUT new contracts are currently being offered by processors at a lower rate than that which has been paid for the past 5 years.

TABLE 1. PRICE INCREASES: BETWEEN MARCH 2021 AND SEPTEMBER 2023

Automotive Fuel	45.4%
International Travel and Accom	36.3%
Gas and Other Household Fuel	35.7%
Electricity	22.3%
Oils and fats	34.2%
Insurance	22.6%
New Dwellings Purchases by Owner-Occupiers	31.1%
Groceries:	
• Cheese	27.3%
• Bread	24.1%
• Milk	22.7%
• Ice cream and dairy products	22.5%
• Eggs	19.7%
• Breakfast cereals	19.2%

Another key issue in the market power game is cost-plus pricing. Any increase in costs at farmer level that are allowed to be passed on are then multiplied by poultry meat processors and supermarkets to result in an artificially inflated price rise for consumers.

An example is given in Example 2:

Example2 : How “COST PLUS” pricing drives up consumer cost unnecessarily.

Say a farmer grows a chicken for \$1.

Say the processor sells that chicken for \$5 (500% lift), so he makes \$4.

Then the retailer sells it for \$10. (100% lift). So he makes \$5.

If the grower receives a 10% price rise because his costs have risen, that's \$1.10. That's **10c** to the farmer.

With 500% lift at processor level, that's \$5.50

Now the processor is making \$4.40, that's **40c** better off. For no extra work and no extra cost.

Now the retailer takes that \$5.50 chook and sells it for \$11.00. Now he's **50c** better off. For no extra work and no extra cost

So, for the 10c rise to the farmer, the processor pockets 40c extra and the retailer 50c extra.

SO any price rises to consumers will be **90%** the result of the processor and retailer, and only **10%** the result of the farmer.

WHERE'S THE PRICE CAPTURE?? WHO BENEFITS??

RESPONSES TO SPECIFIC CONSULTATION ISSUES

1. . What, if any, other objectives should guide the Code to improve relations between supermarkets and their suppliers?

No comment, other than to note that Objectives are routinely ignored by most readers.

2. Does the Code effectively address issues between supermarkets and their suppliers stemming from bargaining power imbalances?

The Code does not appear to have provided transparency in the meat poultry sector, as illustrated by the rapid retail price rise, the processors acting as a proxy for the supermarkets, and growers having no knowledge of whether the excess profits are being captured by processor or supermarket. All growers know is that their cost are rising, their returns are extremely poor, and they are effectively subsidising “cheap” consumer prices for meat poultry.

While the Food and Grocery Code does not appear to have stopped vilification and delisting of suppliers, it is worth noting that poultry meat processors will not and effectively cannot be delisted due to perfect matching of supply:demand, the “staple” nature of poultry meat, and the low number of processors with whom the supermarkets can deal.

3. Is it agreed that there is an imbalance in market power between supermarkets and all suppliers, or only some suppliers and/or some product types?

The latter. With “2 on 2” poultry meat processors to major supermarkets, and production perfectly matching consumption, there is no power imbalance for poultry meat processors. Delisting is not an option for meat poultry. HOWEVER, this has not stopped daily thuggery and nitpicking by supermarkets towards processors who choose not to stand up for themselves in spite of their market power. As a result processors have effectively become proxies for the supermarkets, worsening the existing and well recognised power imbalance between processors and their contract growers.

4. Should the same rules apply to all supplier interactions covered by the Code, or should additional requirements apply where a greater power imbalance exists?

Better transparency across all sectors would allow those trapped by the situation, most obviously meat poultry *, to better understand where the price capture is occurring. The nature of the requirements should match the nature of the power imbalance – with more investigation, oversight and government action in those segments where there is the greatest power imbalance, which means all should be included to avoid the “loophole” game.

5. Should the Code be extended to cover other aspects of the food and grocery supply chain?

There is no doubt that the supermarkets’ response to unfettered market power in the food sector has been used to extend their reach into other retail sectors – again unfettered and unchallenged in spite of massive negative shifts in overall retail market concentration. Hardware, liquor, and department store segments have all fallen to the oligopolistic power of the supermarket chains – but the narrow nature of the ACCC test for “reducing competition” on takeovers has effectively handed the supermarkets a free hand as they move segment by segment.

As noted, farmers who do not directly supply supermarkets are falling foul of supermarket abusive behaviour by proxy. First milk, horticulture and now meat poultry call into these categories. Notably this does NOT apply to red meat, because there are many well established markets for the product, including export, which results in a better balance of market power.

In the Horticulture and Dairy sectors these countervailing power issues have been recognised by government with implementation of complementary mandatory Codes of Conduct to regulate relationships between farmers and processors. Meat poultry farmers desperately and absolutely need the same consideration. This may be a better option than extension of the Food and Grocery Code in some bases as it allows the key elements of each sector to be considered separately.

6. Should some or all alcoholic beverages be included in the scope of the Code?

We have no comment on this issue, other than to note that the supermarket chains are not only the majority owners of this sector due to narrow definitions of market power, but are now putting poorly (misleadingly?) labelled “[own brand](#)” liquors into their own stores. Alcoholic beverage supply is clearly heading the way of the dairy industry.

7. Is the coverage of the Code to the current signatories sufficient to address bargaining power issues across the supply chain? For instance, should the Code’s signatories be extended to more wholesalers that sit between the retailers and producers of food and grocery products?

We have no comment on this issue, except to note that poultry meat processors already act as supermarket proxies and to that extent it would be most useful to have an interlinking mandatory Code of Conduct regulating processor and grower behaviour.

8. Do the provisions set out under the Code ensure it is fit for purpose?

This is unlikely, given that it is a voluntary Code and does not include all supermarkets, that monopolistic behaviours are still rife, and that dispute numbers are low. Just because you are a supplier to a “minor” supermarket player does not mean you won’t be treated unconscionably.

The low number of identified disputes also screams that the Code is not fit for purpose. In a robust and well functioning system (like NCAT, for example), there should be many disputes with robust argument and findings on both “sides”.

In addition, it is worth noting that there are many other ways that supermarkets (and poultry processors) use to ensure they maintain their power.

Finally, voluntary Codes have failed all over Australia (and the world) because the benefits accrue to those who ignore them. An unenforceable rule is no rule at all.

9. Which provisions under the Code help or hinder suppliers? How can the provisions be improved?

Better transparency for consumers and farmers would be a very useful indicator of where the price capture is occurring. Consumers were rightly horrified when they found out how dairy farmers were being treated and changed their buying practices as a result, but that also required a Code of Conduct between the processors and farmers.

10. Does the interaction of the Code operate effectively with other sectoral codes of conduct, particularly in the agricultural sector, and how can this operation be improved?

No comment, other than to note that there is no sectoral mandatory Code of Conduct for the meat poultry industry in spite of the spectacular market power of the processors, and that integration of sectoral Codes with a mandatory Food and Grocery Code is desirable.

11. What international approaches to regulating the conduct of supermarkets in relation to their suppliers should be considered in the Australian context, including lessons learned?

Ideally Australia would have 5 supermarkets with approximately similar market share, all competing vigorously in both geography, price and services to provide “best possible” outcomes to consumers. However, this is not the case and unlikely to be given the history of the industry and current bargaining power. Noting that both major supermarkets and both poultry meat processors are Australian owned (and the size of both industries), there may be ramifications for the country if powerful international chains are “invited” into the market.

However:

- Further consolidation of any kind (including across-sector) should be discouraged, in the food sector, including specialty food stores
- It is noted that the two major food retailers have extended their reach to other sectors in an even greater stranglehold on the Australian retail landscape. Careful consideration of further “sector duopoly arrangements” as has rapidly developed in the liquor sector should be avoided.
- Divestiture of any un-announced or unapproved further takeovers (like the Woolworths takeover of parts of PetStock) must be implemented
- There is a need for better and broader monitoring of, and forced divestiture as needed, for unapproved takeovers/mergers that are likely to reduce competition.
- A change to the criteria around takeovers and mergers is desperately needed to avoid the current very narrow definitions of “the market” that has allowed supermarkets to gain duopoly control including unchecked into new segments, further consolidating their net power and allowing trade-offs between one segment and another. It is not necessary to control more than 51% of a market to control a market and reduce competition.
- The government must institute a Code of Conduct for the poultry meat sector, in the same way as the EU is currently considering, and similar to the USA Meat Packers Act changes.

The [UNCTAD](#) report on Competition Policy in the Retail Sector notes that the EU has “defined criteria” across most EU member states for identifying situations leading to unfair trading practices in the retail sector and notes that:

“Laws in the majority of member States apply to business-to-business relationships at all stages of a supply chain. As unfair trade practices can potentially occur at every stage, member States that have not yet done so should consider introducing legislation that covers the entire business-to-business food supply chain”

The report notes that:

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“Supermarket anti-competitive practices have a profound impact on producers of agricultural products and on the agrifood industry. Agricultural products may be impacted by such practices in different ways. If producers supply brand-name or non-branded goods directly to supermarkets, they may be subject to abuses regarding access fees and terms.....Producers may also suffer indirectly as input suppliers for the agrifood industry. The imitation and price discounting model mostly adopted by supermarkets, however profitable it may be for them, does not foster innovation and productivity growth by producers and/or suppliers, thereby leading to zero-sum competition, as the latter may not earn sufficient profits. In many countries, agriculture is a crucial pillar of the economy. However, competition law and policy usually do not include provisions to tackle competition-related problems in the agriculturalsectors. In most, if not all, countries,competition legislationdoes not address competition problems arising from buyer power. To achieve a sustainable and competitive agricultural sector, States should address competitive bottlenecks in food retail.”

In other words, the EU is encouraging regulators to legislate rather than institute Codes of Conduct, even in the face of the UK Groceries Supply Code of Practice

12. What dispute resolution model would most effectively facilitate positive outcomes for the industry, while also allaying suppliers concerns of retribution?

Retribution is not limited to delisting, but potentially to endless streams of marginally valid “requirements”, adding costs to the supply chain and subsidising supermarket marketing.

The focus should be on action related to a class of suppliers or class of activities rather than individual suppliers, and potentially a broader examination of the entire supply chain to identify where the capture is and what returns are being made that are not balanced against costs.

Noting that poultry meat processors are effective proxies for supermarkets and that genuine retribution is not possible for poultry meat processors; the issues are to facilitate positive and constructive relationships with the rest of the poultry meat supply chain and to ensure enough transparency that (a) points of price capture are identified, and (b) thuggish behaviours beyond the Food and Grocery Code can be identified. Therefore dispute resolution needs to consider the entire supply chain to ensure that less-than-preferred outcomes are not simply passed down the line to the farmer/grower.

The interface with other Codes of Conduct is critical – so similar regulatory activities are engaged across the entire supply chain. This has led to more equitable outcomes in those agricultural industries where there is a farmer-level Code of Conduct as well – for example, in dairy.

Therefore in the meat poultry growing sector there is currently NO dispute resolution model oversights independently from the parties - so retribution is common and frequently terminal.

Poultry meat growers desperately need a farm-level Code of Conduct to deal with this massive power imbalance and negate the potential for dispute outcomes at processor:supermarket level to result in negative outcomes for farmers/growers.

13. What benefits could a mandatory code bring to suppliers?

A regulation can only provide benefits for those that choose to be regulated. Where there is a Code, it is because behaviours have driven the need for regulation due to behaviours that are unethical and unconscionable but not illegal. Noting that supermarkets and processors have a legal obligation to shareholders, they seem to believe they are almost forced into these behaviours in order to squeeze the last dollar return to shareholders.

Therefore, by definition, a voluntary Code most benefits those that choose to ignore it. That is the reason why voluntary Codes have failed all over Australia.

Best illustrated by OPEC, clear financial benefits can accrue to those who ignore what the rest have agreed to do – doing the opposite is most often the economically rational decision. In the case of the “big two” supermarkets, they were essentially obligated to sign to the voluntary Code to avoid mandatory action at that time, but as illustrated by the depressingly poor dispute rate and level of pain in the supplier population, have found other ways to exert their market power. Otherwise, why have market power at all?

A mandatory Code, with appropriate provisions for protection of suppliers, is quite obviously the next step to achieve better transparency. In the meat poultry industry, this MUST be coupled with a Code of Conduct between processors and farmers/growers so that the same fundamental rules apply throughout the entire supply chain.

14. If the Code were made mandatory, what should be the threshold for supermarkets to be included in the Code?

All supermarkets should be included. Otherwise we enter the murky waters of “when is a supermarket a supermarket” and games around definitions.

15. Would it be possible to keep all, or some, of the arbitration model of the current Code if it were made mandatory? If so, how?

Why would this change? Is there an issue transporting the current arbitration model into a mandatory Code, as a “mid-way” point between minor disputes and ACCC action?

16. Are Code Arbiters perceived to be independent from the supermarkets that they oversee?

We have no comment on this item

17. If not, how could the reality and perception of independence of Code Arbiters be enhanced?

We have no comment on this item

18. Could the voluntary Code be amended to address the fear of retribution by supermarkets and if so, how?

Retribution may be extracted in many ways. Unless and until there is a specific clause in relation to potential for retribution in any form, with significant penalties including public naming and fines to Directors or as a percentage of turnover, then retribution will continue.

This will continue will persist as it has done in the more highly regulated and less concentrated UK and EU markets. There is no logical option to address fear of retribution in a voluntary Code. It must be a mandatory Code.

19. Is there evidence of suspected breaches of Code that are not being enforced due to a lack of civil penalty provisions?

We have no comment on this matter.

20. Should civil penalties be available for breaches of the Code?

Any mandatory Code should include a range of penalties at a level high enough for large and well funded businesses with on-staff barristers to contemplate with care. This includes civil penalties and these should be included in the Code.

One of the reasons that the Australian Consumer Law and it's enforcement by ACCC is so respected by businesses generally is the sheer size of the penalties that can be handed down – businesses ignore this level of penalty at their peril. Similarly, company directors are on notice as they can also be individually fined or sanctioned.

In addition, the ACCC has a range of additional penalties available that truly strike fear into public companies – the ability to force corrective advertising, the ability to force recall, the ability to enforce publicly available enforceable undertakings and the like.

A wide range of penalty options should be available, including fines that are set as a % of turnover as well as fixed fines, public naming, fining and censure of Directors and undertakings as above.

21. If civil penalties are to be applied to the Code, what penalties are appropriate?

We have no further comment on the matter, noting that ACCC is a well respected penalty model.

Conclusion:

It should be obvious by this stage that issues between parties to the Food and Grocery Code have a direct bearing on those further down the supply chain. Unless and until there are mandatory enforceable “end to end” rules from farmers to consumer including a mandatory Food and Grocery Code and a dedicated Code of Conduct for the processor:grower interaction, there will be game-playing around loopholes and ongoing thuggery to those that are small enough to be kicked.

The time is well overdue to make the Food and Grocery Code mandatory, and to institute a Code of Conduct between meat poultry processors and the growers that help make their profit.

Yours Faithfully

(by email)

Dr Joanne Sillince BVSc(Hons) MBA FAICD
Chief Executive Officer.