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The True Story of Why Chickens Cross The Road: Consumer Demand, Processor Growing Contracts and Market Regulation in the Australian Chicken Meat Industry

by

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Abstract

Key words: contract negotiation, regulations, dispute resolution

The Australian chicken meat industry is part of a worldwide marketing phenomenon where chickens are 'crossing the road' in record numbers in response to consumer demand and efficient 'farm to food' systems.

Processor vertical integration is at the heart of system efficiency, with farmer growing services secured by exclusive contracts. However, vertically integrated "tied" growers have limited ability to enter into true negotiations with processors, prompting the search for a scheme that balances the need to foster true negotiation against market freedom and compliance with National Competition Policy.

This paper briefly compares the range of legislation regulating the chicken meat industry in Australia and provides an in-depth discussion of the merits of a South Australian Bill, the *Chicken Meat Industry Bill*, to replace the *Poultry Meat Industry Act*.

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“We had chook once a year. Grandpa would take one of the old hens, lop off its noggin on the wood heap and the poor headless creature would run round squirting everywhere, until it fell over. Then I’d help Grandma pluck the corpse.”

Philip Adams
'Simple Joys of a Boy'
Review, The Weekend Australian
December 28-29, 2002, p28

1. Introduction

After Peter Carey’s *True Story of the Kelly Gang* you are entitled to be suspicious of a title claiming to be a true story. Especially when tied to the classic riddle: Why did the chicken cross the road?

The paper addresses several questions in the context of the contemporary Australian chicken meat industry:

- **How many chickens ‘cross the road’? - The value chain story**
How many chickens ‘cross the road’ from farms to processing plants and what is the economic contribution of the chicken meat industry?
- **Why do chickens ‘cross the road’? - The marketing story**
Chicken is Australia’s second most popular meat, predicted to become its most popular meat. Technically, chicken meat may be Australia’s most efficient meat industry but the industry’s economic competitiveness falls short internationally. Pressure for importation of uncooked product is testing biosecurity safeguards and heightening concerns about the social and economic impacts that would accompany imports.
- **How should chickens ‘cross the road’? - The policy story**
What is the involvement of State and Federal Governments in the chicken meat industry? How has National Competition Policy affected chicken meat legislation and the industry? What is the case for the South Australian Chicken Meat Industry Bill?

During the past fifty years the Australian chicken meat industry has developed from backyard flocks to an efficient meat industry producing the second most popular meat in Australia. The industry comprises a small number of processors which, for reasons of biosecurity and economics, secure a large proportion of their requirement for chickens through growing service contracts with specialist farmers within an hour or two of plants near capital cities (Scott, 2002).

Consumer demand for chicken meat in Australia has grown steadily since the 1960s. Section 2 presents an overview of the economic contribution of the industry on a state and national basis.

From the mid-nineties, national competition policy (including the extension of the restrictive trade practices rules in the *Trade Practices Act, 1974 (Commonwealth)*, through the Competition Code, to the activities of the industry members of statutory industry Committees) has necessitated reform of poultry meat industry regulations in State legislatures. Section 3 summarises State government legislation in the marketing of chicken meat and presents some perspective on industry regulation, including the issue of authorisations by the Australian Competition and Consumer Commission (ACCC) for collective negotiation by growers with processors.

Faced with a political imperative to replace the inoperative Poultry Meat Industry Act by 2003, the South Australian Government has developed a Chicken Meat Industry Bill, aiming to steer a middle path between the recent problems of bargaining imbalance apparent during deregulation and the past excesses of regulation which conflict with national competition policy. Section 4 outlines the purpose and content of the Bill.

2. How Many Chickens Cross the Road? – The Value Chain Story

2.1 Australian Chicken Meat Industry

In 2001-02 the Australian chicken meat industry Gross National Food Revenue¹ was \$3.2 billion. A total of 415.6 million chickens (with a farm gate value of \$723.1 million) were grown in Australia. Of the Australian production a small quantity of chickens were exported with the majority being processed into 602,560 tonnes of chicken meat (valued at \$1.808 billion).

In 2001-02 there were 18,500 tonnes of processed chicken meat (valued at \$20.8 million) exported overseas, with surrounding Asian and Pacific Nations being the main destinations. Imports of prepared or preserved chicken meat into Australia were valued at \$1.5 million. The average price paid for chicken meat imports at \$3.95/kg was significantly higher (250.7%) than Australian exports.

It is estimated that Australians consumed a total of 584,400 tonnes of chicken meat with the majority (526,000 tonnes) being consumed through retail sales and the remainder through food services. The total value of Australian consumption was \$3.097 billion.

2.2 South Australian Chicken Meat Industry

In 2001-02 the South Australian chicken meat industry Gross Food Revenue was \$279.5 million. There were approximately 40 million chickens grown in SA (valued at \$69.6 million), which were processed into 58,000 tonnes of chicken meat (valued at \$174.0 million). Of the processed chicken meat

¹ A measure of the sum of food exports, retail and services sales (see Cook, 2002). Data in this section was provided by Evelyn Sinnadurai and Jack Langberg, ScoreCard Section, Corporate Strategy and Policy, Primary Industries and Resources SA

1,017 tonnes were exported overseas with the remainder consumed locally. The approximate value of state consumption through retail and food services sales was \$247.5 million.

3. Why Do Chickens ‘Cross the Road’? - The Marketing Story

3.1 Chicken Meat Consumption in Australia

Consumption rates of meat categories have changed significantly over the last 30 years owing to different tastes and lifestyle changes. Figure 1 shows that chicken meat consumption has increased from 8.3 kilograms per person in 1970 to 30.8 kilograms per person in 2000.

Figure 1. Trends in Per Capita Meat Consumption in Australia – 1970 to 2000 (kilograms per person per year)

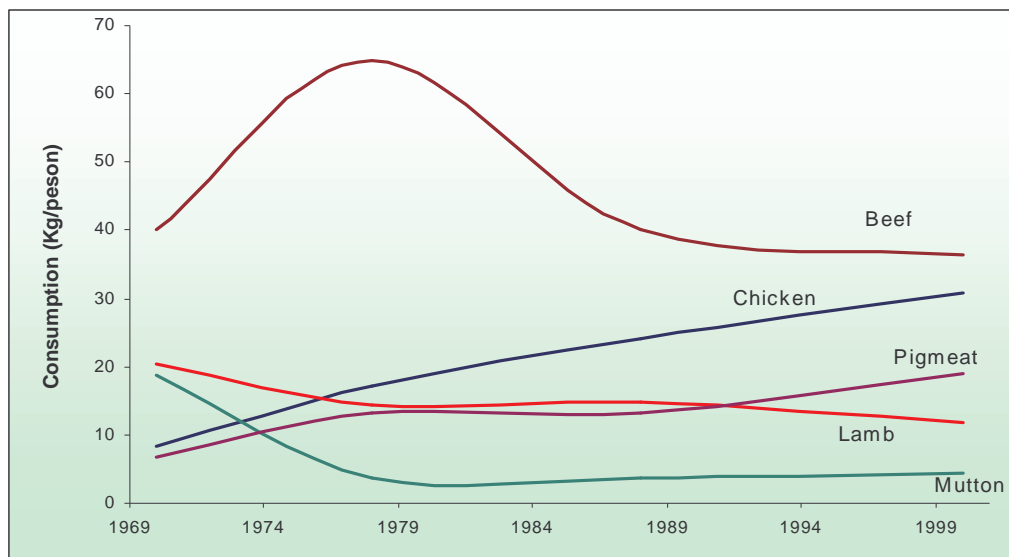


Figure 2 shows that despite the consumption of chicken meat increasing steadily during the past 30 years, beef remains the meat market leader (35% of meat consumption) with chicken meat second (30% of meat consumption). The competitiveness of chicken meat is further illustrated by the long-term down-trend in the real retail price, leading to steadily increasing consumption (Figure 3). Real retail price has been held down for other meats, but chicken is the only meat to trend down and hold it down (Figure 4).

Figures 5 and 6 show value chain analysis of the Australian and South Australian chicken meat industry for 2000/01. The Australian industry has no significant export and prohibits importation of uncooked product. The South Australian industry is a net exporter of chicken meat.

Figure 2. Total Consumption of Key Meat Categories in Australia - 2000 (Tonnes per year)

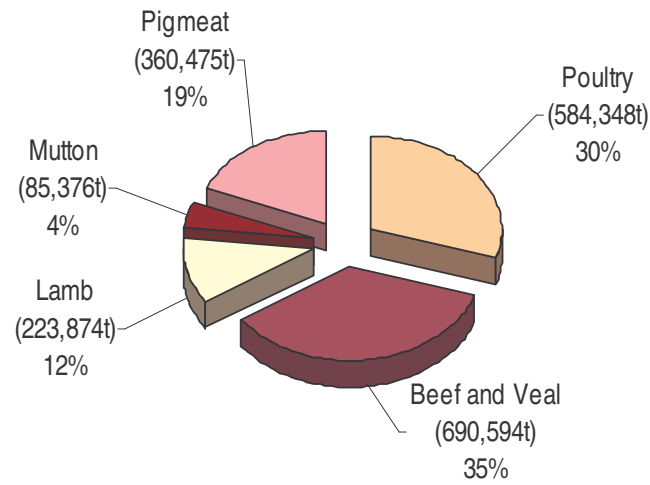


Figure 3: Chicken Meat Consumption and Real Price – 1974/75 to 2001/02

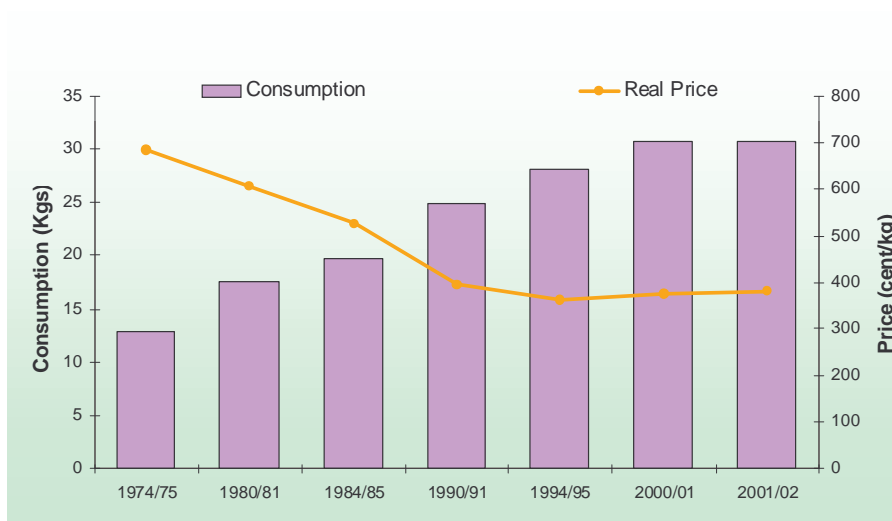


Figure 4: Trends in Real Prices of Major Meats in Australia, 1974/75 to 2000/01

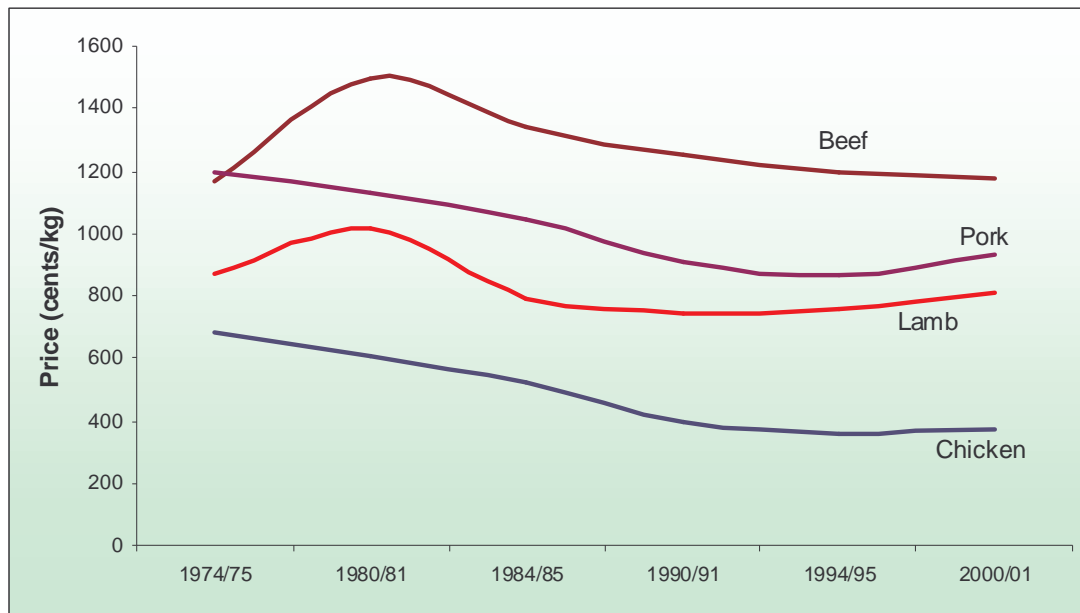
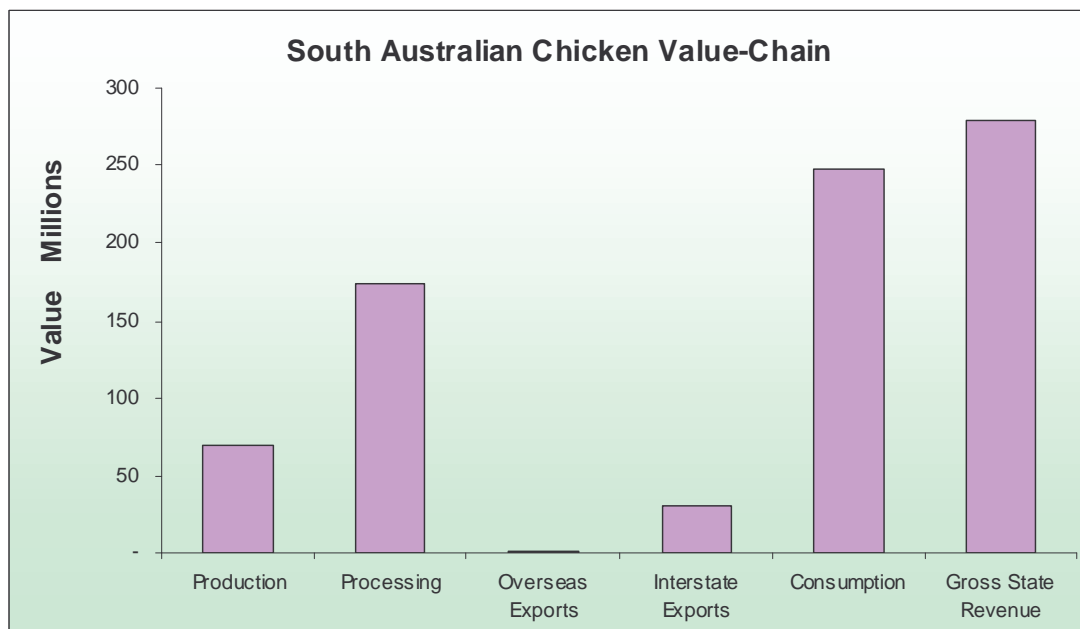
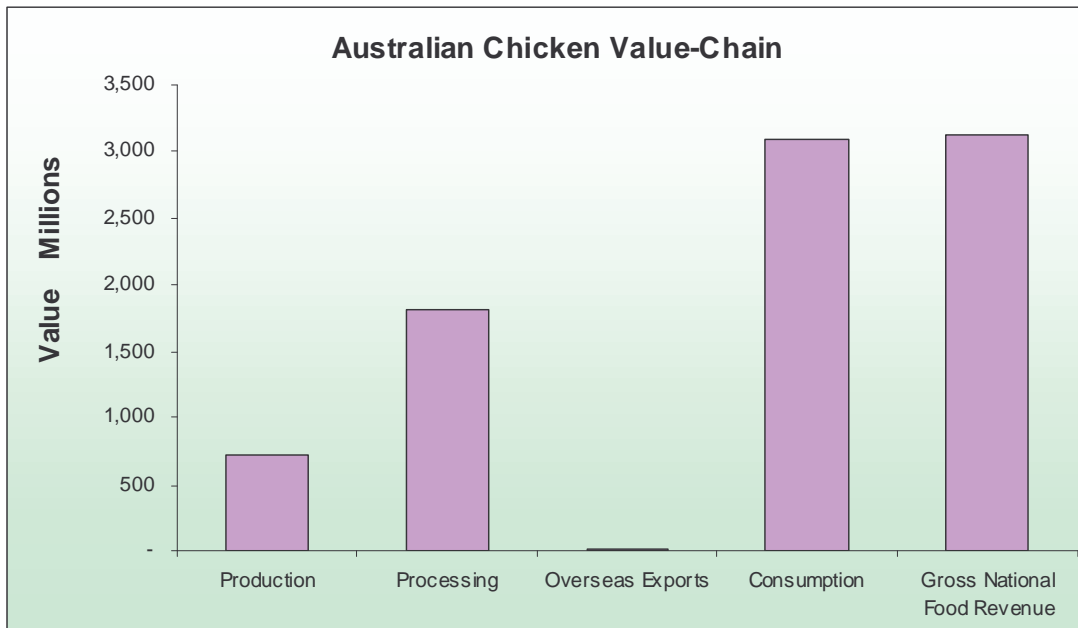


Figure 5: South Australian Chicken Meat Industry Value Chain – 2001/02



Source: ScoreCard Team, Corporate Strategy and Policy, Primary Industries and Resources South Australia

Figure 6: Australian Chicken Meat Industry Value Chain – 2001/02



Source: ScoreCard Team, Corporate Strategy and Policy, Primary Industries and Resources South Australia

3.2 Efficiency and Competitiveness

A series of domestic value chain and international benchmarking reports by agribusiness consultants, Dr Terry Larkin and Dr Selwyn Heilbron, include analyses of the competitiveness of the Australian chicken meat industry (Larkin and Heilbron, 1997; Heilbron and Larkin, 1998; Larkin and Heilbron, 2000; Larkin and Heilbron, 2001; Larkin and Heilbron, 2002).

Larkin and Heilbron have made the following observations about the Australian chicken meat industry:

- The chicken meat industry ranks as Australia's most efficient meat industry, being twice as efficient as the pigmeat industry and three times more efficient than the red meat industries (from Plunkett, 1996);
- In terms of technical efficiency and performance Australia compares favourably with other countries, but in production costs Australia ranks poorly;
- Major world producers such as the United States, Brazil, China, Thailand, and the European Union, which enjoy large economies of scale, low labour and feed costs and in some cases (eg. US and EU) substantial subsidies dominate and contest the few world markets which are presently open to poultry meat imports;
- Australia is a relatively small producer in world terms and is unsubsidised;
- Chicken meat has been highly successful in responding to consumer needs - a clear natural constituency of chicken meat consumers has emerged in Australia (from Storer, 1998);

- Chicken is likely to eclipse beef as Australia's most popular meat sometime this decade;
- Imports could be expected to take 10 to 40 percent of market share if Australia relaxed its quarantine ban on imported uncooked chicken meat, and
- Government influenced (not actual) costs and charges impose significant costs on the industry: "Commonwealth, State and Local Government influenced costs and charges account for over 50% of industry turnover, or around \$1.3 billion. These include feed, labour on-costs, utilities and rates, packaging and labelling, recurrent environmental costs and meat specific charges." (Larkin and Heilbron, 2001).

4. How Should Chickens 'Cross the Road'? – The Policy Story

4.1 State Legislation Comparison

Following a period of intense disharmony during the 1960s legislation was introduced in the mainland states to proscribe how growers and processors would do business. Hence, each mainland State in Australia has its own Poultry, Chicken or Broiler Meat Industry Act. Table 1 has been compiled from the National Competition Council (NCC) Assessment of Legislative Reform as an overview of present and prospective legislation (NCC, 2002).

New South Wales and Western Australia are yet to fulfil their obligations under the Competition Principles Agreement (CPA) according to the NCC. Queensland and Victoria have satisfied their obligations. Advice to the South Australian Government is that the South Australian Chicken Meat Industry Bill, as presented to Parliament in December 2002, satisfies CPA obligations

Figure 7 presents the range of poultry meat industry legislation on a competition continuum. The authors have placed the South Australian Bill closer to the free market than the Victorian Broiler Chicken Meat Industry Act, because the Victorian Act has yet to be repealed.

4.2 South Australia's Chicken Meat Industry Bill 2002

The Chicken Meat Industry Bill 2002 repeals the Poultry Meat Industry Act, 1969 and replaces it with a modern, more pro-competitive, regulatory scheme that will enable owner-farmers in the chicken meat industry to engage in collective negotiations with chicken meat processors supported by compulsory mediation and arbitration at the request of either party. The Bill will also provide efficient farmers with a greater degree of security than under the present de-regulated environment. The Bill also provides an exemption for the collectively negotiated agreements from the operation of the restrictive trade practices rules in Part IV of the Commonwealth's Trade Practices Act, 1974 and in the Competition Code that applies in South Australia by authority of the Competition Policy Reform (South Australia) Act, 1996.

4.2.1 History of Chicken Meat Industry Legislation in South Australia

Beginning in 1969 with the Poultry Meat Industry Act, there has been a long history of legislative intervention in the chicken meat industry. The basis of this intervention has been concern at the significant imbalance in bargaining power between growers and processors, and consequently, the power imbalance in the contractual and other on-going relationships between those two sectors of the industry.

This imbalance in bargaining power exists because processors are able to obtain significant market power at the processor/grower functional level of the market through the strength they obtain from vertical integration and because there is no auction market for meat chickens. On the other hand, the growing sector of the industry is characterised by a requirement for infrastructure investment, which represents a significant sunk cost. The nature of the industry is that growers are essentially “tied” to a particular processor. Growers have traditionally had an exclusive relationship with the one processor because of structural factors, bio-security concerns and commercial factors in this industry.

A grower does not own any birds; the grower simply agists the birds owned by the processor. A grower must be geographically located no further than two hours’ drive from the processing works, or else the bird-loss factor becomes significant. Further, growers cannot easily use their sheds for other types of animal husbandry. The last five years have seen a significant decline in the sale price and the demand for chicken farms, thus making it very difficult for growers to sell their farms and exit the industry.

There have been several attempts by governments to provide an appropriate response to this imbalance in bargaining power and the related issues in this industry, with significant amendments to the 1969 Act in 1976 and a decade later in 1986. The 1969 Act and its amendments was essentially a model law that was in force in all Australian States that had a chicken processing industry. This model forms the basis for the legislation still in force in New South Wales and in Western Australia. Victoria has a similar Act, but has stayed its operation for a period of at least three years. Queensland has a more recent scheme; one that formed the start point for the proposed South Australian Bill.

In 1987, following a dispute concerning entry into the South Australian industry by a new grower, the then Minister for Agriculture requested a review of the 1969 Act. Green and White Papers were released for comment in 1991 and 1994 respectively. The outcome of this process was a decision by the then South Australian government to repeal that Act in 1996. However, the government of the day did not proceed with the repeal when, reacting to grower concerns at their exposure to the bargaining power of the processors, the Labour Party in opposition and independent Members of the Legislative Council (MLCs) signalled their intention to oppose the Bill. In July, 1997, the then Minister convened a meeting of industry and parliamentary representatives, commencing a process to address growers’ concerns and

culminating in the *Chicken Meat Industry Bill* listed in the South Australian Parliament in December, 2002 for debate in Autumn, 2003.

4.2.2 Competition Law

Since the mid-1990s, there have also been competition law and policy issues that have had an impact on the 1969 Act. The Poultry Meat Industry Committee ceased to function from about 1996 and, since then, the 1969 Act has essentially been moribund.

The main reason why the Committee ceased to function was that, since the Competition Code commenced to apply to its members as individuals who were also industry participants and competitors, those members would have been at risk of contravening the restrictive trade practices rules in the Competition Code. Those rules are to the same effect as the restrictive trade practices rules in Part IV of the Commonwealth's Trade Practices Act, 1974.

Further, the South Australian Government is obliged to conduct a Legislation Review of the 1969 Act under clause 5 of the Competition Principles Agreement, which is one of the National Competition Policy inter-governmental agreements. There are several elements in the 1969 Act which are not considered capable of passing the scrutiny of the National Competition Council, which assesses the States' compliance for the purpose of obtaining competition payments. Those elements are the function of the Committee to "approve" new farms, and to "approve" growing contracts, and the requirement that no new grower entrants will be allowed if there is spare capacity amongst existing growers.

Since 1997 the major processors have engaged in collective negotiations with growers under an authorisation from the Australian Competition and Consumer Commission ("ACCC") pursuant to Part VII of the Trade Practices Act. Steggles Enterprises Limited (now Bartter Enterprises Pty Ltd) has now ceased processing in South Australia. Inghams Enterprises Pty Ltd have been granted an extension of that authorisation for a further five years (ACCC, 2003).

4.2.3 Consultation

As part of the development of the scheme proposed by the Bill Primary Industries and Resources South Australia managed a broad program of consultations with all industry parties. A consultation Paper and a Consultation Draft of the Bill were made available for some 11 weeks (SA Government, 2002).

These consultations were part of the National Competition Policy Legislation Review that was completed prior to introduction of the Bill into Parliament. The Review concluded that there was a net public benefit from the Bill. The Review considered that there was little opportunity for either growers or processors to pass costs on to end-consumers, because of: competition between processors; competition in South Australia from chilled and frozen

product imported from other States; and because chicken products compete with other white and red meat products and with fish at the retail level. Given that growers and processors are mutually dependent, both have a vital interest in maintaining the efficiency and price competitiveness of the industry.

Growers that fall within the ACCC authorisation have indicated that while they are able to engage in collective negotiations, in fact they have little leverage. They describe the collective nature of the negotiations as only of benefit to the processor, not its growers. Growers use the expression “take-it-or-leave-it” when describing the negotiations for a new contract. South Australia is one of the most cost competitive states for production of chicken meat, reflected in some of the lowest grow fees on mainland Australia in recent years. In fact, in real terms, the growing fee has declined over the past five years. However, growers’ concerns go beyond the issue of price, and extend to a number of non-price matters, including the nature of the relationship with their processor.

For their part, the processors consider that the scheme proposed by the Bill is unnecessary, and that if it comes into operation, it will increase costs in the industry resulting in a decline in processing in South Australia, and thus also in the growing sector.

Processors claim that compulsory arbitration of unresolved disputes will result in less than ‘best practice’ outcomes, slower adoption of new technology, lowering of bird husbandry levels, and delays while matters are progressed through arbitration. Processors object to compulsory arbitration, and claim that it will force them to deal with growers with whom they no longer wish to deal. Processors described this as losing “their ultimate right to determine the strict conditions that they need in place to protect their interests and to keep driving down costs” (Processors’ Submission, 2002). Further, the processors have claimed that the Trade Practices Act exemption from the primary boycott provisions for the purposes of allowing collective negotiations operates as “a right to strike”.

By introducing the Bill into Parliament, the South Australian Government has shown that it disagrees with those views. The reason for the Bill is to enable **both** parties, processors and growers, to have a fair opportunity to negotiate appropriate growing contracts, supported by the discipline provided by the prospect of compulsory mediation and arbitration.

The Bill is silent as to the content of growing contracts. It does not require that any particular terms be adopted, except that for reasons of transparency the contracts must be in writing. It leaves the terms of the contract to the parties, and for matters that are unresolved or in dispute at the end of the day to be determined by a mutually agreed mediator, or by an independent arbitrator.

The Trade Practices Act exemption does not give the growers a “right to strike”. First, a “strike” only occurs between employees and their employer. Growers are formally contractors, even if the practical nature of their

relationship with processors looks more like an employment relationship. As contractors, they are bound by contract, and a breach of that contract or “strike” (even while in the course of negotiations for the next contract), would give rise to an action for damages. Further, there is no incentive for growers to refuse to deal with a processor during negotiations, unless the growing price is less than the growers marginal cost of production. Also, the “strike” is not an effective negotiating tool, as the processor can simply take the growers to mediation and arbitration on the issues in dispute and obtain a binding ruling. Finally, a breach of contract by a grower would have adverse implications for any future arbitration if the particular grower(s) were not offered an exclusive growing contract in the next negotiating round.

4.2.4 Adjustments

One of South Australia’s major processors, Bartter Enterprises Pty Ltd (previously Steggles) decided in the late 1990s that, rather than invest in new processing facilities in South Australia, it would expand its facilities at Geelong in Victoria. That meant that by early 2002 a considerable number of ex-Bartter growers were without a contract. Anticipating that Bartter would lose retail market share in South Australia, other South Australian processors offered growing contracts of various duration to the ex-Bartter growers.

Contrary to expectations, Bartter appears to have maintained its 25% - 30% share of the South Australia retail market. However, there has been a growth in production in South Australia because, now, some 30% of South Australian processed meat is exported to the eastern states or overseas. Thus, processors in South Australia are sensitive to grower efficiency issues and price, as well as to transport economics.

Other structural adjustment issues concern the type of technology that should be adopted for growers’ shedding and how the investment risk should be shared. Traditionally, South Australian growers have had small farms of between two and three sheds. Now, the preferred size is between four to ten sheds, with sheds being up to some 2,900 square metres and costing about \$400,000 per shed with appropriate fit-out and tunnel ventilation.

Further, farms should be located on suitable land; in particular, not high-value land or metropolitan land, but land that can include an appropriate buffer zone and fencing for biosecurity reasons, access to appropriate water supply and three phase power, and that allows compliance with zoning regulations.

The long term health of the chicken meat industry in South Australia requires that these structural adjustment issues be addressed, together with the exit from the industry of the least efficient farms and the least competent growers, until the supply of growing services is in equilibrium with the demand for those services by processors.

The long term health of the industry also requires that efficient growers be given the security of contracts in writing for a reasonable term of years, and a knowledge that if they continue to perform and if they can fit within their

processor's required level of growing services, there will be a continued relationship with that processor to support the grower's substantial investment.

On the part of the processor, there should be no impediment to the establishment of "home farms" if they consider that efficient. There should be no impediment to encouraging and contracting with new entrants, even at the expense of the least efficient of the growers with whom they were previously contracted. However, there can be no arbitrary and unreasonable refusal to deal with an efficient grower when there is a need for a level of growing services than can accommodate that grower. It is the least efficient grower, objectively assessed, who should always be at risk.

4.2.5 The Scheme

The Bill establishes a scheme that achieves these outcomes. The broad requirements that arbitrators must take into account in clause 5.(2)(b), and in addition, the factors that arbitrators must take into account in Part 8 of the Bill, clause 28.(3), relating to the exclusion of growers, are expressly aimed at achieving these outcomes.

Processors have forecast dire consequences for the industry in South Australia if the Bill comes into operation. The South Australian Government does not accept that the scheme proposed by the Bill will cause the increase in costs claimed by processors. If the decision to process in South Australia remains, simply, a commercial decision, the Bill should have no adverse consequences for the industry in this State.

However, the South Australian Government accepts that there will be structural adjustment, whether or not the Bill comes into operation. The Bill does not stand in the way of change in this industry. The Government considers that if the industry in South Australia is to remain healthy for the long term it must be dynamic. Growers and processors must be subject to competitive pressures, including the pressures provided by new entrants and requirements to adopt new technology and improved standards.

The Bill does not set out any of the requirements that the parties should include in their growing contracts, nor does it "approve" contracts; it leaves that entirely to the parties. Instead, the Bill establishes a structure within which the parties can negotiate on a more equal basis than at present, and within which an arbitrator is able to impose reasonable and commercially sound awards if the parties cannot, at the end of the day, resolve their own disputes. In that regard, all of the parties in this industry acknowledge that they are mutually dependent. There is no incentive for the grower community to seek more than the industry can reasonably bear. The Bill also supports growers by enabling them to seek advice from consultants and experts when engaging in collective negotiations with their processor.

4.2.5.1 Exclusivity and Grower Choice

The critical factor upon which the scheme depends is the requirement that each processor has a “tied” or “exclusive” relationship with particular growers for the term of their contract. Even if the contract does not specify an exclusive relationship, the nature of all but the most *ad hoc* of processor/grower arrangement will have the effect of being exclusive. A “tied” agreement includes the concept of “switching” whereby a contracted grower is “loaned” to another processor in order to balance capacity requirements between them. That should be regarded as an efficient outcome for all concerned.

Exclusivity allows processors to manage their requirements for growing services over the longer term, ensures that the biosecurity (eg, cross-infection) of a processor’s birds are not adversely affected, and ensures that the processor can adequately control the micro-management issues that arise during the growing cycle, such as shed maintenance, infrastructure standards, and the supply of services such as medicines and feed.

If the processor requires, or will in fact achieve, a tied relationship, the processor must give the grower a statutory Notice inviting the grower to commence negotiations for a contract.

The grower then has the option either of: agreeing to negotiate on an individual basis with the processor; or of joining a collective negotiating group of all the other growers contracted, or chosen by the processor to be contracted, to that processor. If the grower chooses to negotiate individually, that grower is essentially unregulated, except for the transparency requirement that all growing agreements must be in writing.

There is a penalty included in the scheme for the purpose of requiring a processor to comply with the process of giving the statutory Notice. The effect of these requirements is, critically, that it is the grower who has the choice of whether to negotiate collectively, or individually.

4.2.5.2 The Trade Practices Exemption

Part 6 of the Bill provides an exemption under section 51 of the Trade Practices Act and under the Competition Code of South Australia for the giving by processors of the statutory Notice, and for certain specified activities concerned with the collective negotiations, and the making of, and the giving effect to, the growing agreements. The exemption relates to activities between each individual processor and those growers who are recorded on the Register as members of that processor’s collective negotiating group.

The activities include: the processor requiring the “tied” relationship with the grower; market sharing by growers of their available growing capacity; exclusive dealing arrangements imposed by the processor on growers relating to feed, medications and vaccines, sanitation chemicals, veterinary

services, shed maintenance, harvesting and transport services, etc; the process of collective negotiations being technically a collective boycott (a collective refusal to deal with a particular person on particular conditions - viz, those proposed by the processor during the negotiations) and collective pricing arrangements, including price reviews.

4.2.5.3 The Registrar

In place of the previous Poultry Meat Industry Committee, the proposed scheme simply has a Registrar appointed by the Minister, whose task is to maintain the Register, and to undertake certain functions in relation to the number and election of growers representatives, the calling of meetings of the negotiating group to vote on a contract, and in relation to referring a dispute to mediation or arbitration. In this way, it is intended to keep the administrative costs of the scheme to a minimum. The Registrar's costs may be recovered by a fee levied on industry participants.

4.2.5.4 Compulsory Mediation and Arbitration

As previously indicated, the terms of any growing agreements are to be negotiated by the relevant parties, the processor and the growers. Compulsory arbitration at the election of either the processor or the growers is available if any dispute cannot be resolved.

At any time, a grower may elect to leave a collective negotiating group, and deal individually with a processor.

Mediation and arbitration is available, at the election of either processor or grower, during the term of a contract if there is a dispute as to the obligations of either of them under a collectively negotiated growing agreement. This would include a dispute on the terms to be agreed on a variation of any contract under a previously agreed variation clause.

Part 8 of the Bill provides a mechanism to ensure that a grower is not arbitrarily and unreasonably excluded from a future contract. As described above, there are factors that an arbitrator is required to take into account that preserve the commercial interests of the processor, while protecting the efficient grower at the expense of the less efficient grower. In particular, a grower cannot be excluded simply because that grower has a profile as a grower negotiator, or more generally, as a grower representative.

4.2.5.5 Administrative Arrangements

The Bill contains the usual administrative provisions relating to the conduct of arbitrations, provision for the appointment of a Registrar and consequent delegations, a requirement for an Annual Report, and provision for the annual fee to recover the cost of the Registrar's operations. There is also a requirement for the Minister to review the operation of the Act, and to lay a copy of the report before Parliament, within six years of the commencement

of the Act. This will allow a period that reflects the traditional five-year contract, and the negotiation of the next round of contracts.

4.2.5.6 Transitional Arrangements

The Bill contains a scheme for transitional arrangements that deems all existing growing agreements, whether in writing or parol, as being arrived at through the collective negotiating process, and hence includes all growers initially in collective negotiating groups. While these existing contracts will continue to operate according to their terms, disputes arising as to their operation, and disputes as to the exclusion of any of the growers from further contracts, are subject to the mediation and arbitration provisions of the scheme. Otherwise, many growers would not come within the scheme for up to five years. Once a grower is a member of a negotiating group, the grower may at any time elect to leave, and thus become unregulated.

However, the transition arrangements allow the Registrar, on application from either processor or grower, to exclude growers with certain types of contracts from each processor's negotiating groups.

First, growers with "probationary" contracts can be excluded. These are contracts that operate from batch-to-batch and do not follow on from a fixed term contract between the grower and the same processor. A batch-to-batch contract may specify a single batch, or a small number of batches, such that it is not, in effect, a contract for a fixed term.

Secondly, "individual" agreements may be excluded. This is a contract that is of such a nature that it would be unlikely that it would have been negotiated collectively if the Bill had been in operation at that time. That is, if the grower had been given a choice of collective or individual negotiations following receipt of the statutory Notice, the grower would have chosen individual negotiations. Such a contract will show significant (meaning: considerable, big or large) differences from **all other** growing agreements with the relevant processor in relation to its period of operation or other principal terms and conditions.

For example, it is anticipated that a long-term contract, say, for ten years to support a new entrant with new investment, with a pricing formula that was considerably different from the usual price range offered by that processor reflecting the size and efficiencies of the new infrastructure, would usually be negotiated individually, not collectively, under the proposed scheme.

However, contracts that have been signed recently that are artificially differentiated by period or other factors, but essentially retain the core of a processor's standard terms, will not be regarded as "individual" and thus excluded from a negotiating group, whether or not the contract was in fact individually negotiated. Prior to the scheme coming into operation, it is entirely predictable that growers desperate for a contract will be "picked off" by processors anxious to exclude as many of their growers as possible from the operation of the scheme.

4.2.5.7 Towards Genuine Negotiations

Considerable consultation with industry occurred during the development of the Bill. While significant changes were made to the scheme, the Government considers that compulsory mediation and arbitration, although opposed by the processors, is central to ensuring that the collective negotiations are genuine negotiations, not the present style of “take-it-or-leave-it” negotiations under the ACCC authorisation. That is not, of course, the fault of the ACCC. There is such an imbalance in bargaining power between processors and growers that collective negotiations *per se* do not provide growers with any significant counterweight to the processors. Without that right to mediation and arbitration, there would be, essentially, no difference between the effect of the Bill and ACCC authorisation, and thus no justification for the Bill.

The idea that there is nothing sinister about ‘take-it-or-leave-it’ contracting was advanced by the processors during the consultations. It was suggested that ‘take-it-or-leave-it’ is the norm in the business of contracting. The President of the Law Society of South Australia, Mr Andrew Goode, clearly has difficulty with the acceptability of ‘take-it-or-leave-it’ contracts when he observes:

“The rise of (these) privatised utilities and statutory corporations – as well as the rationalisation of other industries resulting in corporations that occupy leading positions in the relevant market – will lead to increasing risk that they may, in the future, exercise their market power to force consumers, small businesses, and even other large corporations to sign unreasonable contracts on a ‘take-it-or-leave-it’ basis (Goode, 2002).”

Goode further suggests that the South Australian Government:

“should look at introducing legislation similar to that in New South Wales to balance the increasingly powerful bargaining position held by many large corporations when dealing with businesses and consumers.”

Though quite specific, the South Australian Government Chicken Meat Industry Bill is sympathetic to Goode’s suggestion.

5. Conclusions

1. Q: How Many Chickens Cross the Road?

A: 415 million chickens crossed the road in Australia in 2001-02!

Chickens for meat generated \$3.2 billion in whole-of-chain economic activity to the national economy in 2001-02. The farm-gate value of the Australian chicken meat industry market chain was \$723 million in 2001-02 (23 percent of the gross industry value).

2. Q: Why Do Chickens Cross the Road?

A: Because of the market for chicken meat.

Market chain efficiency and the steady rise in consumption to 32 kilograms per capita has lifted chicken to Australia's second most popular meat; 30 percent of the market for meat compared to meat leader, beef at 35 percent.

Key features of the industry have been vertical integration, contracting of growing services and an imbalance in bargaining power between processors and growers. From the late sixties to the mid-nineties State Governments supported legislation enabling central committee price control, to address the problems of bargaining power imbalance. Remnants of that type of legislation persist in some states.

3. Q: How should chickens cross the road?

A: In response to the market for chicken meat, together with 'light-handed' regulation addressing its failures.

National Competition Policy has prompted most States to amend or abandon chicken meat industry legislation supporting centralised control. Not all states have legislation compliant with the Competition Principles Agreement (CPA).

The South Australian Chicken Meat Industry Bill is compliant with the CPA. It aims for genuine negotiation; a small but significant step in advance of the ACCC determination that authorises collective negotiation, but is ambivalent to the presence of genuine negotiation. It is an innovative solution to achieving compliance with competition policy with checks to the business and social detriments that can accompany bargaining-power imbalance.

The Bill's message is that 'take-it-or-leave-it' contracting is unacceptable where the contractor has significant investments, few alternative supply options, and so little or no countervailing power.

The Bill also insists that mediated or arbitrated interventions have regard to commercial and economic factors, with a strong focus on efficiency to balance the equity issues.

In the review that will take place six years after the commencement of the Bill, the success of the Bill may fairly be judged on its contribution to the health of the South Australian chicken meat industry - that is, that increasing numbers of meat chickens will continue to "cross the road" under an appropriate cost structure in order to meet the demands of the market.

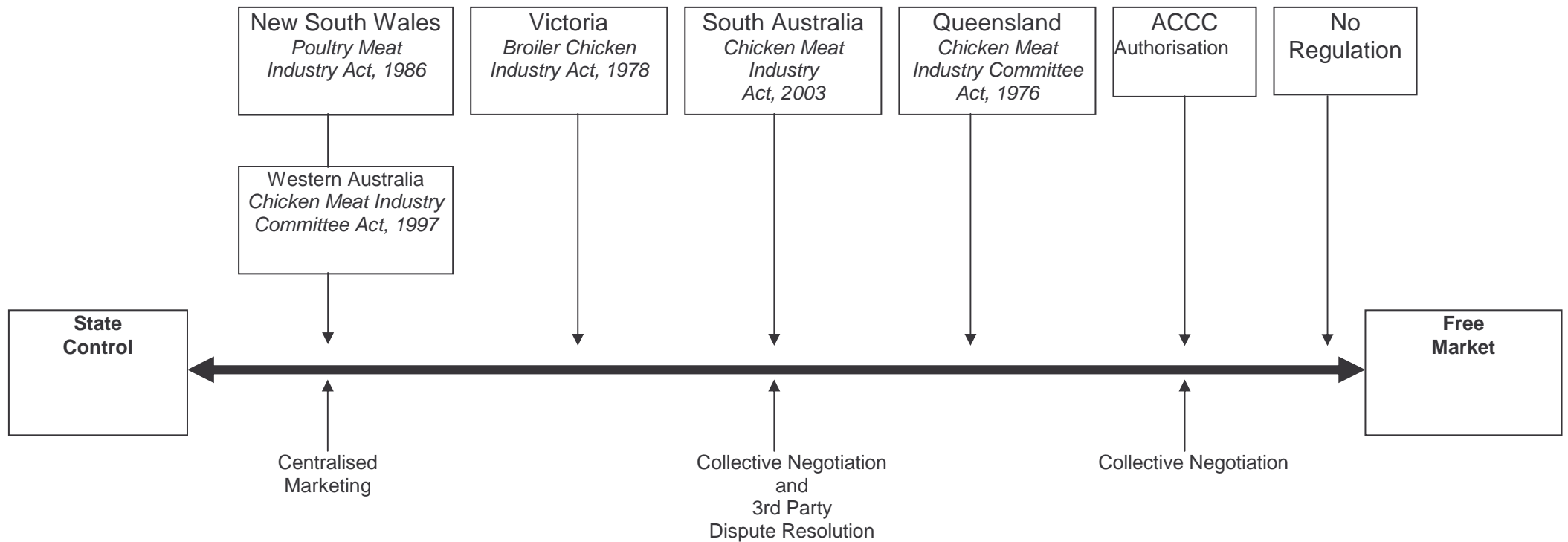
Table 1: Poultry Meat Industry Regulation

Jurisdiction	Legislation	Key Restrictions	Review Activity	Comments
New South Wales	<i>Poultry Meat Industry Act, 1986</i>	Prohibits supply of chickens unless under an agreement approved by the Industry Committee.	Preview completed in mid-2000. Under consideration but not yet released.	Central price fixing and contract approval to be retained. <i>Poultry Meat Industry Amendment (Price Determination) Act</i> introduced October 2002. It includes an authorisation provision (see s9A). NCC concludes that CPA clause 5 obligations have not been met by NSW.
Western Australia	<i>Chicken Meat Industry Act, 1977</i>	Prohibits supply of chickens unless under an agreement approved by the Industry Committee. Processing plants and growing facilities must be approved. (see s19).	Review completed in 1996, recommending that Government retain the industry committee's power to set industry-wide supply fees, subject to review after five years, and that restrictions on producer entry and individual negotiations be removed. The NCC's 1999 NCP assessment urged WA to further amend the Act to facilitate (but not require) collective bargaining of growers with their respective processor rather than with all processors.	Fees to be set by the Committee. (see s16). When WA passes amendments consistent with these recommendations of the 1996 Review, then it will fulfil its related obligations under CPA.
Victoria	<i>Broiler Chicken Industry Act, 1978</i>	Prohibits supply of chicken unless under an agreement approved by the Industry Committee. Processing plants and growing facilities must be approved. (see s19).	Review completed in November 1999, recommending that producers seek Australian Competition and Consumer Commission (ACCC) authorisation for collective bargaining, and that the Government repeal the Act. ACCC authorisation in June 2001 and the Industry Committee has ceased to be involved in contract negotiations.	Collective negotiation under ACCC authorisation. Act to remain in force for at least 3 years. The Act will continue to underpin existing contracts and provide a safety net for growers as a starting point for enterprise negotiations. Victoria presently operating with fixed price from last Committee determination. Victoria has met its CPA clause 5 obligation.

Jurisdiction	Legislation	Key Restrictions	Review Activity	Comments ²
South Australia	<i>Chicken Meat Industry Bill, 2003</i>	Agreements must be in writing. Bill allows for collective negotiations. Compulsory mediation and arbitration during all phases of contracting on all matters.	Bill is being reviewed by NCC to determine whether it complies with CPA clause 5.	Internal approval of the review granted by the SA Department of Premier and Cabinet.
Queensland	<i>Chicken Meat Industry Committee Act, 1976</i>	Agreements must be in writing. Act allows for collective negotiations. Compulsory arbitration on price during the term of the agreement (see s.29).	Review completed in 1997, recommending the industry committee convene groups of growers to negotiate with processors. The committee is barred from intervening in negotiations on growing fees (see s13(2)).	Meets CPA obligations (see s22), due to adopting the recommended amendments which took effect from October 1999.

² Partially sourced: "National Competition Council Assessment of Legislation Reform", November 2002 NCP assessment.

Figure 7: A Competition Continuum of State Poultry Meat Industry Regulations



References

Australian Competition and Consumer Commission 2003, Determination: Application for authorisation lodged by Inghams Enterprises Pty Ltd. Authorisation No. A90825, 22 January.

Chicken Meat Industry Bill 2002, Parliament House of South Australia
www.parliament.sa.gov.au

Cook A V 2002, Quantitative Measures And Performance Indicators In The Agri-Business Sector

<http://www.agrifood.info/Connections/Spring2002/Cook.ht>

Goode A 2002, Voice for Consumer must lead ACCC, The Advertiser, 23 November, p 28.

Primary Industries and Resources SA 2002, National Competition Policy Report , Primary Industries and Resources South Australia website, Agriculture / Livestock & Animal Health / Publications / Chicken Meat Legislation / National Competition Policy Legislation Review
<http://www.pir.sa.gov.au/dhtml/ss/section.php?sectID=1567&tempID=11>

Minister for Primary Industries and Resources South Australia 2002, Chicken Meat Industry Bill 2002, Second Reading Speech, December, Department of Primary Industries and Resources South Australia website, Agriculture / Livestock & Animal Health / Publications / Chicken Meat Legislation / Second Reading Speech
<http://www.pir.sa.gov.au/dhtml/ss/section.php?sectID=1567&tempID=11>

Heilbron S G and Larkin J T 1998, 'Managing structural change in the Australian chicken meat industry'. Report to Chicken Meat Industry Federation, December.

Heilbron S G and Larkin J T 1998, 'The Chicken Meat Industry: Drivers of change', Managing structural change in the Australian Chicken meat industry, Report to Chicken Meat Industry Federation, December.

Heilbron S G 1997, 'Benchmarking: A new Technique for assessing Competitiveness', The Australian chicken meat industry International Benchmarking Study. Report to Chicken Meat Industry Federation, May.

Heilbron S G 1997, The Australian Chicken Meat Industry – International Benchmarking Study, Report to Chicken Meat Industry Federation, May.

Larkin J T and Heilbron 2001, Benchmarking and value chain on-going study program, Report to the Chicken Meat Industry Federation, July (Part 1) and November (Part 2).

Larkin J T and Heilbron 2002, Benchmarking and value chain on-going study program, Report to the Chicken Meat Industry Federation, June (Year 3 report).

National Competition Council 2002, Assessment of Legislative Reform, November.

Plunkett H, Roberts J and Wilson R 1996, The Australian Pig and Pigmear Industries, Australian Agribusiness Review, June.

Storer C E; Soutar G N; Hawkins M H 1998, Meat consumption patterns: some Australian evidence. Australian Agribusiness Review, May.

Scott P 2002, The sustainability of the poultry industry in a global market: The Australian Meat Chicken Industry, Poultry Information Exchange, Gold Coast, Queensland, April.