



New South Wales

# Poultry Meat Industry Regulation 2008

under the

Poultry Meat Industry Act 1986

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Poultry Meat Industry Act 1986*.

IAN MACDONALD, M.L.C.,  
Minister for Primary Industries

## Explanatory note

This Regulation repeals and replaces the *Poultry Meat Industry Regulation 2003* which would otherwise have been repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation deals with the following matters:

- (a) the procedure for nominating processor and grower members for the Poultry Meat Industry Advisory Group,
- (b) the prescription of persons who may certify that a poultry growing agreement has been entered into,
- (c) the functions of the Poultry Meat Industry Committee with respect to the resolution of disputes between processors and growers,
- (d) the prescription of matters that must be addressed by a poultry growing agreement and the standard provision for each of those matters.

This Regulation is made under the *Poultry Meat Industry Act 1986*, including sections 6A, 7, 19 and 23 (the general regulation-making power).

This Regulation comprises or relates to matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## Poultry Meat Industry Regulation 2008

under the

Poultry Meat Industry Act 1986

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Poultry Meat Industry Regulation 2008*.

#### 2 Commencement

This Regulation commences on 3 October 2008\*.

#### 3 Definitions

(1) In this Regulation:

**calling of nominations**, for an appointment of a processor member or grower member, means the date on which a notice is first published in respect of the appointment of a member under clause 5.

**close of nominations** means the final time and date fixed by the secretary for the close of nominations for that appointment.

**grower member** means a member of the Advisory Group referred to in section 6A (3) (c) of the Act.

**processor member** means a member of the Advisory Group referred to in section 6A (3) (b) of the Act.

**secretary** means the secretary of the Poultry Meat Industry Committee.

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

(2) Notes included in this Regulation do not form part of this Regulation.

\* The regulation (statutory rule) appointed 3 October 2008 as the date of its commencement. Pursuant to section 39 (2A) of the *Interpretation Act 1987*, the regulation is not invalid merely because the regulation was published in the Gazette after the day on which one or more of its provisions is or are expressed to take effect, but provides, in that case, for that or those provisions to take effect from the day on which it is published in the Gazette, instead of from the earlier day.

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Clause 4 Poultry Meat Industry Regulation 2008

Part 2 Nominations for processor and grower members

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## **Part 2 Nominations for processor and grower members**

### **Division 1 Preliminary**

#### **4 Nomination of members to represent processors and growers**

Processor members and grower members are to be nominated in accordance with this Part.

### **Division 2 Calling of nominations**

#### **5 Notice of proposed appointment**

- (1) Whenever one or more processor or grower members are required to be appointed, the secretary must cause notice of that fact to be published in the Gazette and at the same time sent by mail to each processor or grower, as the case requires.
- (2) The notice:
  - (a) must specify the number of processor or grower members required to be appointed, and
  - (b) must call for nominations of candidates, and
  - (c) must fix the time and date for the close of nominations, and
  - (d) must advise where nomination forms may be obtained and where nominations may be lodged, and
  - (e) must specify the qualifications that qualify a person to nominate a candidate.
- (3) The date fixed for the close of nominations must be not earlier than 21 days, or later than 28 days, after the date on which the notice is published in the Gazette.

#### **6 Postponement of close of nominations**

- (1) The secretary may postpone the close of nominations for a period not exceeding 14 days by a notice similar to, and published and sent by mail in the same manner as, the notice calling for the nomination of candidates.
- (2) The power conferred on the secretary by this clause may be exercised more than once in respect of a proposed appointment.

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**Division 3 Nominations****7 Qualifications for nominating candidates**

- (1) A person is qualified to nominate a candidate for appointment as a processor member if the person is a processor who has processed designated poultry during the calendar year in which the calling of nominations occurred or during the previous calendar year.
- (2) A person is qualified to nominate a candidate for appointment as a grower member if the person is a grower who has grown designated poultry under an agreement with a processor during the calendar year in which the calling of nominations occurred or during the previous calendar year.

**8 Eligibility for nomination**

Any person is eligible for nomination as a candidate for appointment as a processor or grower member.

**9 Nomination of candidates**

- (1) A nomination of a candidate:
  - (a) must be in the form approved by the Director-General, and
  - (b) must be made by:
    - (i) in the case of a nomination for a processor member—at least one processor (other than the candidate) who is qualified to nominate a candidate, or
    - (ii) in the case of a nomination for a grower member—at least 5 growers (other than the candidate) who are each qualified to nominate a candidate, and
  - (c) must be lodged with the secretary before the close of nominations.
- (2) If the secretary is of the opinion that:
  - (a) in the case of a candidate for nomination as a processor member—none of the persons by whom the candidate is nominated are qualified to nominate a candidate, or
  - (b) in the case of a candidate for nomination as a grower member—less than 5 of the persons by whom the candidate was nominated are qualified to nominate a candidate,

the secretary must, as soon as practicable, cause notice of that fact to be given to the candidate.

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Clause 10 Poultry Meat Industry Regulation 2008

Part 2 Nominations for processor and grower members

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- (3) A candidate who has been nominated for appointment may withdraw the nomination at any time before the close of nominations by notice in writing addressed to the secretary.

### **10 Selection of members**

- (1) The Committee must select, from the persons duly nominated to represent processors or growers, the persons required to be appointed to represent processors or growers.
- (2) A person who is selected in accordance with subclause (1) is taken to be nominated to represent processors or growers, as the case requires.

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## Part 3 Miscellaneous

### 11 Prescribed matters for poultry growing agreements

- (1) A poultry growing agreement must be in writing.
- (2) For the purposes of section 7 (1) of the Act, a poultry growing agreement must address the following matters:
  - (a) the term of the agreement,
  - (b) if the term of the agreement is less than 5 years—notification of the Poultry Meat Industry Committee of the proposed term of the agreement,
  - (c) notification of intention to extend or renew the agreement,
  - (d) the duty of the parties to act fairly, reasonably and in good faith,
  - (e) the provision of a Broiler Growers' Manual by the processor,
  - (f) the method for negotiating the price of poultry grown under the agreement,
  - (g) the method of, and procedures for, making payments,
  - (h) the quality of poultry to be provided by the processor,
  - (i) the quality of feed to be provided by the processor,
  - (j) the information that the processor is required to provide to the grower relating to food safety, environmental management, animal welfare, biosecurity, industry issues and matters relevant to production performance,
  - (k) the facilities and services that are required to be provided by the grower,
  - (l) the quality assurance procedures that are required to be developed and implemented by the processor,
  - (m) the quality assurance procedures that are required to be developed and implemented by the grower,
  - (n) the information that the grower is required to provide to the processor relating to the health of the poultry and the grower's performance under the agreement,
  - (o) the delivery and collection of poultry and supplies,
  - (p) the obligations of parties relating to abnormal losses, compulsory slaughter and dead bird disposal,
  - (q) dispute resolution.
- (3) For the purposes of section 7 (2) (a) and (3) of the Act, the standard provision set out in Schedule 1 in relation to each of the matters referred to in subclause (2) is prescribed for that matter.

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Clause 12 Poultry Meat Industry Regulation 2008

Part 3 Miscellaneous

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### 12 Committee's functions with respect to dispute resolution

- (1) The only functions that the Committee may exercise for the purpose of facilitating the resolution of disputes between processors and growers are as follows:
  - (a) it may assist in the mediation of disputes, whether by way of providing a mediator or otherwise,
  - (b) it may assist in the arbitration of disputes, whether by way of providing an arbitrator or otherwise.
- (2) The Committee may only assist in the mediation or arbitration of a dispute pursuant to a written application for assistance signed by each of the parties to the dispute.
- (3) The Committee may not assist in the arbitration of disputes unless the parties to the dispute have attempted to resolve the dispute by mediation.
- (4) The Committee may not assist in the mediation or arbitration of a dispute as to the amount of any fee payable under a poultry growing agreement in relation to the growing of poultry.
- (5) In this clause:

**arbitration** means arbitration under the *Commercial Arbitration Act 1984*.

**mediation** means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

### 13 Certificate as to notification relating to poultry growing agreement: section 19 of the Act

For the purposes of section 19 of the Act, the following persons are prescribed:

Deputy Director-General, Agriculture, Biosecurity and Mine Safety,  
Department of Primary Industries

Director, Intensive Industries Development, Department of Primary  
Industries

### 14 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Poultry Meat Industry Regulation 2003*, had effect under that Regulation continues to have effect under this Regulation.

### 15 Repeal

The *Poultry Meat Industry Regulation 2003* is repealed.



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## **Schedule 1      Standard provisions for poultry growing agreements**

(Clause 11 (3))

### **1    Term of agreement**

- (1) This agreement commences on **[specify day]** or, if no such day is specified, on the day on which the last party signs this agreement.
- (2) Subject to subclause (3), this agreement expires at the end of the period of **[specify period]** or, if no such period is specified, 5 years from the day on which this agreement commences, unless the agreement is otherwise lawfully terminated.
- (3) If the growing of a batch of poultry is incomplete at the date on which this agreement is to expire, the agreement is extended until the growing and collection of that batch of poultry is complete.

### **2    Parties to notify the Poultry Meat Industry Committee if the term of the agreement is less than 5 years**

- (1) Each party must notify the Poultry Meat Industry Committee if the term of this agreement is less than 5 years, not later than 30 days after this agreement commences.
- (2) If the parties fail to so notify the Poultry Meat Industry Committee, this agreement is taken to expire 5 years from the day on which this agreement commences, unless the agreement is otherwise lawfully terminated.
- (3) If, after receiving notification under subclause (1), the Poultry Meat Industry Committee notifies the parties that the Committee is not satisfied with the term of the agreement, the agreement is taken to expire 5 years from the day on which this agreement commences, unless the agreement is otherwise lawfully terminated.

### **3    Notification of intention to extend or renew the agreement**

A party who wishes to extend or renew this agreement must notify the other party in writing of that intention at least 6 months before the expiry of this agreement.

### **4    Parties to act fairly, reasonably and in good faith**

The parties to this agreement agree to act fairly, reasonably and in good faith when acting under this agreement.

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Schedule 1 Standard provisions for poultry growing agreements

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### 5 Provision of Broiler Growers' Manual by processor

- (1) The Broiler Growers' Manual is the document of that name provided to the grower by the processor.
- (2) The Broiler Growers' Manual is to be provided at no cost to the grower.
- (3) The Broiler Growers' Manual forms part of this agreement.
- (4) This agreement has no effect until the Broiler Growers' Manual has been provided to, and agreed to by, the grower.

### 6 Method for negotiating the price of poultry grown under this agreement

- (1) The processor and grower will renegotiate the price of poultry grown under this agreement every **[specify interval]**, or if no such interval is specified, every 12 months.
- (2) If the parties are unable to agree on the price of poultry grown under this agreement, the parties are to seek to resolve the dispute in accordance with the dispute resolution procedures set out in this agreement.

### 7 Method of, and procedures for, making payments

- (1) The parties must make all payments in accordance with the terms of this agreement.
- (2) The processor is required to pay the grower for a batch of poultry within **[specify period]** of receiving the batch of poultry from the grower or, if no such period is specified, within 60 days of receiving the batch of poultry.
- (3) For the purposes of determining amounts payable under this agreement, the processor must count and weigh all poultry delivered to and received from the grower and keep records of the number and weight of the poultry.
- (4) If any amount payable under this agreement remains unpaid at the due date for payment, a party may charge interest on that unpaid amount at the prescribed rate payable on unpaid judgments on that date under section 101 of the *Civil Procedure Act 2005*.
- (5) The processor is not required to make a payment to a grower for any poultry that is not of a reasonable quality or that otherwise fails to meet the standards required by this agreement.
- (6) If the processor decides not to make a payment to a grower under this agreement, the processor must provide notice in writing to the grower of the reasons for the decision not to make that payment.

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- (7) The processor must review a decision under subclause (6) if a request is made in writing to the processor by the grower setting out the reasons for seeking the review.
  - (8) On the conclusion of the review, the processor must provide notice, in writing, to the grower of the reasons for the outcome of the review of the decision not to make a payment.

**8 Quality of poultry to be provided by the processor**

- (1) The processor is to provide the grower with poultry of a reasonable quality.
- (2) If at any time after providing poultry in accordance with this provision, the processor becomes aware that the poultry is not of a reasonable quality, the processor must advise the grower, in writing, of that fact.

**9 Quality of feed to be provided by the processor**

- (1) The processor is to provide the grower with feed of a reasonable quality.
- (2) If at any time after providing feed in accordance with this provision, the processor becomes aware that the feed is not of a reasonable quality the processor must advise the grower, in writing, of that fact.

**10 Processor to provide information to the grower relating to food safety, environmental management, animal welfare, biosecurity, industry issues and matters relevant to production performance**

- (1) The processor is to develop effective quality assurance procedures relating to food safety, environmental management, animal welfare and biosecurity, and provide the grower with accurate information in relation to those procedures.
- (2) The processor is to provide the grower with accurate information and advice in relation to the poultry meat growing industry, production performance and the calculation and payment of growing fees, insofar as any such information or advice is relevant to this agreement, as soon as practicable after becoming aware of the information or advice.

**11 Facilities and services to be provided by the grower**

The grower is to provide facilities, labour and management services in accordance with the Broiler Growers' Manual for the purpose of growing poultry.

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### **12 Quality assurance procedures to be developed and implemented by the processor**

The processor is to develop and implement effective quality assurance procedures relating to food safety, environmental management, animal welfare and biosecurity.

### **13 Quality assurance procedures to be developed and implemented by the grower**

The grower is to develop and implement effective quality assurance procedures relating to food safety, environmental management, animal welfare and biosecurity, having regard to any information provided to the grower by the processor in relation to those procedures.

### **14 Grower to provide information to the processor relating to the health of the poultry and the grower's performance under this agreement**

The grower is to provide the processor with accurate information and advice on the health of the poultry provided by the processor and the grower's performance under this agreement.

### **15 Delivery and collection of poultry and supplies**

- (1) If the processor provides supplies (including poultry and feed) to a grower under this agreement, the processor must deliver all such supplies to the grower's premises or such other place as the parties agree.
- (2) If the processor receives supplies (including poultry) from a grower under this agreement, the processor must collect all such supplies from the grower's premises or such other place as the parties agree.
- (3) The processor must provide reasonable notice to the grower before delivering or collecting supplies under this agreement.

### **16 Abnormal losses, compulsory slaughter and dead bird disposal**

- (1) Unless otherwise defined, in this agreement *abnormal losses* means:
  - (a) losses above 3% in the first 7 days after the delivery of day old poultry by the processor, or
  - (b) losses above an average of 0.3% per day in any 7 day period after the period referred to in paragraph (a).
- (2) If abnormal losses are due to an act or omission of the grower in breach of this agreement, unless otherwise specified in this agreement, the processor may:
  - (a) remove poultry from the grower after providing notice in writing to, and consulting with, the grower, and

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- (b) make other arrangements for the care of the poultry, and
  - (c) recover from the grower all reasonable expenses incurred by the processor in acting under paragraph (a) or (b).
- (3) If abnormal losses are not due to an act or omission of the grower in breach of this agreement or the cause of the loss is unknown, unless otherwise specified in this agreement:
- (a) the processor must dispose of culled, sick or dead poultry, at no cost to the grower and, with the assistance of the grower, remove or dispose of any such poultry, and
  - (b) the processor will pay the grower:
    - (i) in relation to losses during the period referred to in subclause (1) (a)—50% of the growing fee for each culled, sick or dead bird, or
    - (ii) in relation to losses during the period referred to in subclause (1) (b)—50% of the growing fee for each culled, sick or dead bird plus a pro rata amount of the remaining 50% of the growing fee for any such bird, based on the expected growing period of the poultry.
- (4) If the processor receives compensation for the compulsory slaughter of a batch of poultry, the processor must pay the grower a proportion of that compensation that reflects the grower's share of the loss.
- (5) If any poultry is killed during catching, removal from the grower's premises or transport to the processor, the processor must pay to the grower the full growing fee in accordance with this agreement in respect of any such poultry.

#### **17 Dispute resolution**

- (1) A party claiming that a dispute has arisen under this agreement must notify the other party of the dispute in writing giving details of the dispute.
- (2) Each party must negotiate in good faith to resolve the dispute and, if necessary to resolve the dispute, the Chief Executive Officers or other senior officers of the parties are to be directly involved in the negotiations.
- (3) If the dispute is not resolved within 30 days after notice of the dispute was given under subclause (1), or such longer period as may be agreed by the parties, the parties must:
  - (a) refer the dispute to mediation, and
  - (b) notify the Poultry Meat Industry Committee of the dispute.

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- (4) If the dispute is not resolved within 30 days after the commencement of mediation under subclause (3), or such longer period as may be agreed by the parties, the parties must refer the dispute to arbitration.

BY AUTHORITY

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