



New South Wales

Poultry Meat Industry Amendment (Poultry Growing Agreements) Regulation 2008

under the

Poultry Meat Industry Act 1986

His Excellency the Lieutenant-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

The object of this Regulation is to amend the *Poultry Meat Industry Regulation 2003* to prescribe matters that must be addressed by a poultry growing agreement and prescribe a standard provision for each of those matters.

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

2008 No 323

Clause 1

Poultry Meat Industry Amendment (Poultry Growing Agreements)
Regulation 2008

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1 Name of Regulation

This Regulation is the *Poultry Meat Industry Amendment (Poultry Growing Agreements) Regulation 2008*.

2 Amendment of Poultry Meat Industry Regulation 2003

The *Poultry Meat Industry Regulation 2003* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 2)

[1] Clause 43A

Insert after clause 43:

43A 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 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,

2008 No 323

Poultry Meat Industry Amendment (Poultry Growing Agreements)
Regulation 2008

Schedule 1 Amendments

- (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 2 in relation to each of the matters referred to in subclause (2) is prescribed for that matter.

[2] Schedule 2

Insert after Schedule 1:

Schedule 2 Standard provisions for poultry growing agreements

(Clause 43A (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 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 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.

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.

2008 No 323

Poultry Meat Industry Amendment (Poultry Growing Agreements)
Regulation 2008

Schedule 1 Amendments

- (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.
- (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.

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 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.

2008 No 323

Poultry Meat Industry Amendment (Poultry Growing Agreements) Regulation 2008

Schedule 1 Amendments

- (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 0.2% per day for two or more consecutive days after the first 7 days of such a delivery.
- (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
 - (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 referred to in subclause (1) (a)—50% of the growing fee for each culled, sick or dead bird above the 3% limit, or
 - (ii) in relation to losses referred to in subclause (1) (b)—50% of the growing fee for each culled, sick or dead bird above 0.2% per day plus a pro rata amount of the remaining 50% for each day after the first 7 days, based on the expected growing period for 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.
- (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.