

FORM A

COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 – Sub-section 88(1)*

**EXCLUSIONARY PROVISIONS**

**AGREEMENTS AFFECTING COMPETITION**

**APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

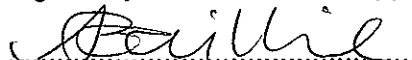
(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of Applicant: The South Australian Oyster Research Growers Association Inc.
- (b) Short description of business carried on by applicant:  
Association for oyster growers in South Australia
- (c) Address in Australia for service of documents on the applicant:  
C/- DMAW Lawyers, Level 3, 80 King William Street, Adelaide SA 5000
2. (a) Brief description of contract, arrangement or understanding and, where already made, its date:  
Agreement between the applicant and 4 oyster hatcheries providing for the formation of a company to invest moneys to be levied on oyster growers in South Australia for the purposes of research and development via the South Australian Oyster Research Council Pty Ltd Agreement was authorised on 8 September 1999 and entered into in 1999. Authorisation expired on 7 September 2004.
- (b) Brief description of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions:  
The agreement potentially restricts supply of oyster spat if a levy is not paid.
- (c) Names and addresses of other parties or proposed parties to contract, arrangement or understanding:
  1. The South Australian Oyster Research Council Pty Ltd
  2. The South Australian Oyster Hatchery Pty Ltd
  3. Cameron of Tasmania Pty Ltd
  4. Shellfish Culture Ltd
  5. Geordy River Aquaculture

3. Names and addresses (where known) of parties and other persons on whose behalf application is made:  
South Australia Oyster Research Council Pty Ltd
4. (a) Grounds for grant of authorisation: The grounds are contained in the submission attached to the application.
- (b) Facts and contentions relied upon in support of those grounds: The grounds are contained in the submission attached to the application.  
(See Notice 1 on the back of this Form)
5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:
- (a) Is this application to be so expressed: Yes
- (b) If so, the following information is to be furnished:
- (i) the names of the parties to each other contract, arrangement or understanding:  
Other hatcheries, as yet unknown.
- (ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application: N/A  
(See Direction 5 and Notice 2 on the back of this Form)
6. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*): No.
- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture? No.
- (c) If so, by whom or on whose behalf are those other applications being made?  
N/A
7. Name and address of person authorised by the applicant to provide additional information in relation to this application: DMAW Lawyers

Dated 5 April 2005

Signed by/on behalf of the applicant

  
.....  
(Signature)

.....  
ANNA BAILLIE  
DMAW Lawyers  
On behalf of SA Oyster Growers Association Inc

## DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished:
  - (a) in so far as the particulars of any of them have been reduced to writing - by lodging a true copy of the writing; and
  - (b) in so far as the particulars or any of them have not been reduced to writing - by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
5. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

## NOTICES

1. In relation to item 4, your attention is drawn to sub-section 90(8) of the *Trade Practices Act 1974* which provides as follows:
  - “(8) The Commission shall not -
    - (a) make a determination granting:
      - (i) an authorisation under sub-section 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
      - (ii) an authorisation under sub-section 88(7) or (7A) in respect of proposed conduct; or
      - (iii) an authorisation under sub-section 88(8) in respect of proposed conduct to which sub-section 47(6) or (7) applies; or
      - (iv) an authorisation under sub-section 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- (b) make a determination granting an authorisation under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.”
2. If an authorisation is granted in respect of a proposed contract, arrangement or understanding the names of the parties to which are not known at the date of the application, the authorisation shall, by sub-section 88(14) of the *Trade Practices Act 1974*, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.