

**FORM B**

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

**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 which provision may have the effect of substantially lessening competition 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 Grower 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 the provisions of the contract, arrangement or understanding that do or would or might have the effect of substantially lessening competition:

The agreement by oyster growers to add a levy on the oyster spat sold by them.

(c) Names and addresses of other parties or proposed parties to contract, arrangement or understanding:

The South Australian Oyster Research Council Pty Ltd  
The South Australian Oyster Hatchery Pty Ltd  
Cameron of Tasmania Pty Ltd  
Shellfish Culture Ltd

Geordy River Aquaculture

- (c) Names and addresses (where known) of parties and other persons on whose behalf application is made:

South Australia Oyster Research Council Pty Ltd

3. (a) Grounds for grant of authorisation:

The grounds are contained in the submission attached to application A60024.

4. 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 above mentioned 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

5. (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

6. 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 authorized 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 authorization is sought. Those particulars shall be furnished –
  - (a) in so far as the particulars or 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 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 matter 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-sections 90(6) and (7) of the *Trade Practices Act 1974* which provide as follows:-

"(6) The commission shall not make a determination granting an authorization under sub-sections 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct, unless it is satisfied in all the circumstances that may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result,

if

- (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
- (b) the proposed covenant were given, and were complied with; or
- (c) the proposed conduct were engaged in, as the case may be.

"(7) The Commission shall not make a determination granting an authorization under sub-section 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding, or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the detriment to the public constituted by any lessening

of competition that has resulted, or is likely to results, from giving effect to the provision or complying with the covenant.”

2. If an authorization 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 this application, the authorization 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.