



Inghams Enterprises Pty. Limited

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General Manager
Adjudication
ACCC
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CANBERRA CITY ACT 2601

9 March 2009

Dear Sir,

Collective bargaining Notification
by SA Farmers Federation on behalf of a group of SA Chicken growers
CB 00070

Thank you for your letter of 4 March 2009 in relation to the above, addressed to the SA General Manager (Mr Des Hindson) of Inghams Enterprises Pty Limited.

We note that immunity commences on 14 March unless the ACCC issues a draft notice objecting to the Notice.

At the outset I wish to point out that Inghams has long supported collective bargaining and in fact was a pioneer in applying for collective bargaining authorisations on behalf of its growers as far back as the late 1990's.

Inghams Enterprises currently has 17 contracted Broiler Chicken Growers (operating 20 individual sites) in South Australia. All of Inghams SA contract Broiler Chicken growers have opted for individual contracts in preference to the legislated arrangements. In doing so Inghams required each electing grower to provide a letter signed by an independent accountant or solicitors that the election was in the interests of the grower. The Inghams Broiler Chicken Contract contains provisions for mediation on disputes and mediation then arbitration on disputes over fees.

The growers contracted to other processors remain under the legislation unless they also have elected to opt for individual contracts.

We note that 15 of the 18 applicants are Inghams Growers and in addition there is:

- Glenellen Pty Ltd who is not contracted to Inghams at all. We have had discussions with this grower however we understand this grower is currently negotiating a contract with a rival processor;

- Pineview – there is no contract to date. This is an existing grower looking to setup another two farms. Discussions to date have been on the understanding that an individual contract will be in place. This site is currently under construction (siteworks commenced);
- Murray Land Broiler Management – there is no contract in place and the grower has no approved DA – no farm construction or siteworks have commenced.

We specifically note that the two growers who are not part of the application are growers who are paid significantly higher fees under the individual contract incentive system (by virtue of their performance) that operates in SA and that as they are efficient growers they may well earn significantly less under a collective fee arrangement (this is also true of many of the growers who are a party to this application).

Regulatory environment in South Australia

As background we advise our understanding of the SA regulatory environment.

The SA Government proposed in 1995 that the Poultry Meat Industry Act (1969) would be repealed from June 1996, but because of a lack of numbers in the Legislative Council, the legislation was left to lie dormant.

In 1997 the ACCC granted authorization to Inghams and its growers (A 90595) and in 1998 to Steggle's and its growers (A 30183) to undertake collective negotiations with their processor on contracts and fees for a period of 5 years. (No authorization for boycott conduct was advocated).

The authorizations contained, among other matters, provisions for dispute resolutions on disputes arising within the contract period based on mediation and in relation to fees, mediation and arbitration. These resolutions agreed to by growers who supported the applications were based on the agreements reached in Queensland as to dispute resolution procedures and subsequently incorporated in Queensland legislation. All matters were settled by consultation between growers' committee and processor.

No other authorizations apart from the Inghams and Steggle's applications were applied for in South Australia. During the period two new integrated processors, Joes Poultry and Adelaide Poultry began contract growing operations.

In 2002 as the original authorization was expiring, Inghams again applied for ACCC authorization to continue the collective negotiation arrangements and A 90825 was granted in January 2003 for another 5 years. Steggle's withdrew from growing activities in South Australia in April 2002 and all its growers (apart from one) were transferred to other processors.

Following a change of Government in SA and sustained lobbying by grower representatives for legislation to be continued, draft legislation was proposed in mid 2002 and a Departmental review of the proposed legislation was conducted.

The legislation (Chicken Meat Industry Act 2003) was not deemed acceptable by the NCC and further amendments were required that resulted in the Chicken Meat Industry (Arbitration) Amendment 2004 that was accepted.

The Act established a Registrar and enables mediation and arbitration for disputes under existing contracts, mediation on disputes arising from new contracts and a grandfather provision for mediation and arbitration if an existing grower is excluded from a new contract.

Importantly the Act allows individual growers to opt out of the legislated collective arrangements and to enter individual contracts with their processor. There is no provision for boycott conduct in the legislation.

Comments on Notification

Inghams does not object to the Notification as such but has some concern about the detail and even the relevance of the submission. There is an issue as to who will represent the Inghams growers in any collective negotiation and this is outlined further below.

- Currently there are individual contracts in existence with Inghams SA Broiler Chicken Growers, the expiry dates for these vary, with between 1 and 5 years remaining on the contracts. Growers have opted for the individual contracts rather than fall under the SA legislation as outlined above.

As part of each individual negotiated contract, there is an individual negotiated fee in place which also has an incentive performance based component. Many of the SA Growers earn on average more per bird than Growers in other Australian states which are paid on a collectively negotiated and pooled fee.

Inghams does not wish to collectively negotiate a fee on this basis. However, if any collective negotiation of fee (as does occur in other Australian states) such negotiation will be a POOL basis fee and this will result at least initially in a much lower fee than the individually negotiated fee (including incentive) for many of our more efficient growers with the sacrifice that good performance will not be adequately encouraged or rewarded under a pooled system.

Ingham's are not obligated to collectively negotiate fees and will continue to seek to only negotiate individually.

Inghams, as indicated previously, is not against collective bargaining but feels that such collective process is not suitable for fees and productivity aspects as these are very much a case by case issue dependent upon the growers age, location and type of growing facilities.

We also advise that the wording of these individual contracts is very similar (almost identical) to the Inghams National position on contract wording (which already comprise legislated, collective negotiated or individual negotiated Chicken Broiler contracts).

- Inghams is totally opposed to any boycott and reminds the ACCC of the Australian Competition Tribunal decision and the rejection of the boycott proposals in Victoria.

Any approval of a collective bargaining application must specifically exclude the Inghams SA Broiler Growers ability to Boycott.

- Should this Collective Bargaining application be approved by the ACCC (which is not the preference of Inghams) Inghams do not want the South Australian Farmers Federation to be the party to be the collective negotiator. The SAFF may also represent Baiada Poultry P/L growers and Gourmet Poultry P/L growers. There is a conflict and a danger of a one fits all policy by SAFF. Inghams Grower delegates (compromising Ingham growers only) should be the collective negotiator not the SAFF.

This is a fundamental point for Inghams and should be considered in the ACCC assessment prior to 14 March 2009. The Notification simply says that this issue has not been finalised. Inghams asks that that be finalised now and that it not be SAFF.

- Inghams already consults with its growers on general contract terms and will continue to do so. It has always seen that as good practice. That being the case Inghams wonders about the claim that the collective bargaining regime will bring about better input into contract negotiation. We are concerned that the collective action is seeking to get uniform fees and productivity components and do away with efficiency considerations.

- A justification for the Notification is that we are 'currently bringing on a stream of new farms'.

That is not the case.

The last new grower contracted was during the first part of 2008 and before that January 2005.

Inghams are currently working closely with at least three existing growers seeking interest for expansion of farms / sheds where the land holding meets Code requirements. These existing growers already have negotiated individual contracts.

Inghams is also in discussion with one potential new grower on Greenfield site – this grower has indicated that they would also prefer an individual contract.

- The Notification has provision for mediation by the Produce and Grocery Industry Ombudsman and if not resolved then by arbitration.

Inghams whilst favouring collective negotiation in appropriate circumstance will never agree to be bound by any arbitration in contract negotiation and we point out that the VFF in the Victorian Poultry Growers Tribunal case also opposed any such arbitration provision.

The current Inghams individual broiler Chicken contracts already contain provisions for mediation on disputes and mediation then arbitration on disputes over fees during the contract period.

- The Applicants claim that there will be saving in transaction costs.

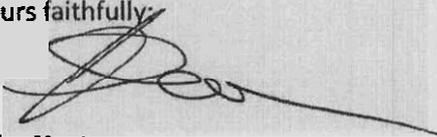
Inghams disputes that in relation to most growers.

Inghams can envisage that under a collective bargaining regime and the desire of one-fits-all policy that the fee paid to inefficient growers will be a sticking point. This will result in no agreement and months of fruitless wrangling with the collective contracts. Whilst individual contracts with the efficient are concluded rapidly.

In conclusion, Inghams advises that we have had support both in SA and Australia for the existing wording of our Broiler Growing Contract with our Growers and Inghams is not opposed to collective negotiations for Contract wording. It is however opposed to any collective negotiation on fees or fee related productivity. Inghams is also opposed to having that SAFF represent the Inghams SA Broiler Growers in any collective negotiation. Finally, the ACCC should not allow any Boycott action as a result of any ACCC collective negotiation approval.

Inghams understands that this letter will be placed on the ACCC Public Register. Should you require any further information please contact the writer.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'John Hexton', written over a light grey rectangular background.

John Hexton
Director Group Services