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18 March 2009

David Hatfield
Director
Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
Canberra
ACT 2601

Via email: Simon.Mitchell@accc.gov.au

To the ACCC,

Response to questions from the ACCC

In response to the submission from Ingham's, the ACCC have prepared 3 questions to the South Australian Farmers Federation (SAFF). The SAFF have prepared responses to these questions in conjunction with the SA chicken farmers. The questions posed by the ACCC and the responses are below.

1. What progress has been made in the election or appointment of negotiating representatives?

The farmers concerned with the collective bargaining agreement have not appointed or elected a negotiating representative, but they will do so in the due course of the formation of the collective bargaining group. However, significant progress has been made towards electing negotiating representatives. The farmers have formed an incorporated group with a constitution and an official Chairperson and Secretary. The name of the group is 'The South Australian Ingham's Growers Association Inc'. A scanned copy of their constitution has been submitted with this letter. Please feel free to consult with the constitution.

2. Is it foreseeable that the SAFF will be appointed as the negotiator with Ingham's on behalf of the notifying parties?

It is not foreseeable that the SAFF will be appointed as the negotiator with Ingham's on behalf of the notifying parties. This is not the current or foreseeable role of the SAFF. The SAFF both provide and foresee that they will provide administrative support only. Examples of this support include council rooms, computers and secretarial work.

3. Does the SAFF have any role in representing South Australian chicken growers in negotiations with other processors, such as Baiada Poultry Pty Ltd or Gourmet Poultry Pty Ltd

The SAFF do not have any role in representing South Australian chicken growers in negotiations with other processors such as Baiada Poultry Pty Ltd or Gourmet Poultry Pty Ltd. The SAFF do not foresee that they represent chicken growers in this role in the future.

If the ACCC require any further information, please don't hesitate to ask.

Regards,

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

Luke Laucke

B. Ag. Sc.

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- (4) A member of the Committee having a pecuniary interest in a contract with the Association must disclose that interest to the Committee as required by the Act, and shall not vote with respect to that contract.
12. **FINANCIAL YEAR:**
The financial year of the Association shall be the period ending on 31st March 2002, and thereafter a period of 12 months ending on 31st March in each year.
13. **BORROWING POWERS:**
- (1) Subject to this rule the Association may borrow money from banks or other financial institutions upon such terms and conditions as may be determined by the members in General Meeting from time to time.
 - (2) Subject to section 53 of the Act the Association may invite and accept deposits of money from any person on such terms and conditions as may be determined by the Committee from time to time.
14. **RULES:**
- (1) Subject to approval by a resolution of 70% of the members of the Association present personally or by proxy, these rules may be altered (including an alteration of name), or be rescinded and replaced by substituted rules. Such an alteration shall be registered with the Commission as required by the Act.
 - (2) The registered rules shall bind the Association and every member to the same extent as if they had respectively signed and sealed them, and agreed to be bound by all of the provisions thereof.
15. **THE SEAL:**
- (1) The Association shall have a common seal upon which its corporate name shall appear in legible characters.
 - (2) The seal shall not be used without the express authorisation of the Committee, and every use of the seal shall be recorded in the minute's book of the Association. The affixing of the seal shall be witnessed by two Committee members.
 - (3) The seal shall be kept in the custody of the secretary or such other persons as the Committee may from time to time decide.
16. **MEETINGS:**
- (1) The Committee may call a special general meeting of the Association at any time, and shall call an annual general meeting in accordance with the Act.
 - (2) The first annual general meeting shall be held within eighteen (18) months after the incorporation of the Association, and thereafter within two (2) months after the end of its financial year.
 - (3) Upon a requisition in writing of not less than five ordinary members of the Association, the Committee shall within 14 days of the receipt of the requisition, convene a special general meeting for the purpose specified in the requisition.
 - (4) Every requisition for a special general meeting shall be signed by the members making the same and shall state the purpose of the meeting.
 - (5) If a special general meeting is not convened within 14 days as required by sub rule (3) the requisitionists may convene a special general meeting. Such a meeting shall be convened in the same manner as a meeting convened by the Committee, and for this purpose the Committee shall ensure that the requisitionists are supplied free of charge with particulars of the members entitled to receive a notice of meeting. The

Committee to expel the member is upheld by the members of the Association in general meeting after the appellant has been heard, and in such event membership will be terminated at the date of the general meeting at which the determination of the Committee is upheld.

9

THE COMMITTEE:

- (1) The affairs of the Association shall be managed and controlled exclusively by a Committee which in addition to any powers and authorities conferred by these rules may exercise all such powers and do all such things as are within the objects of the Association, and are not by the Act or by these rules required to be done by the Association in general meeting PROVIDED THAT any Committee decision in relation to any amendments to the Processor/Growers contract and the growing fee or in relation to any matter which substantially affects the welfare or livelihood of members shall be brought before the members in general meeting for ratification.
- (2) The Committee shall have the power to appoint such officers and employees as are required to carry out the objects of the Association, including a public officer required by the Act, and may discuss or delegate any of its powers to such officers and employees.
- (3) The Committee shall be comprised of a Chairperson, Vice-Chairperson, Secretary, Treasurer and four (4) committee members all of whom shall be members of the Association.
- (4) The first Committee of the Association shall be appointed from the promoters of the Association, or be comprised of such persons as hold office prior to incorporation. The Committee shall hold office until the next annual general meeting after the appointment at which time the members

- (3) within 30 minutes of the time appointed for the meeting the members present shall form a quorum. The chairperson of the Committee or if there shall be no chairperson, then the vice-chairperson of the Committee or in their absence, or on their declining to take, or retiring from the chair, one of the Committee members chosen by meeting shall preside as chairperson at every general meeting of the Association.
- (4) If there is no such chairperson or vice-chairperson present within five minutes after the time appointed for holding the meeting, the members present may choose one of their number to be the chairperson.
- (5) The chairperson may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (6) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as if that meeting were an original meeting of members.
- (7) At any general meeting, a resolution put to a vote shall be decided on a show of hands, and a declaration by the chairperson of the meeting that a resolution has been carried or lost, shall unless a poll is demanded by conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, the resolution.
- (8) If a poll is demanded by the chairperson of the meeting or by three or more members present personally or by proxy, it shall be taken in such manner as the chairperson directs. The result of such poll shall be the resolution of the meeting,

paid a nomination fee determined from time to time by the Committee shall be eligible for ordinary membership provided that no one farm or trading entity shall be entitled to be represented by more than one ordinary member;

- (b) Associate Membership: Any person who is the employee of an ordinary member or the lessor of a contracted farm and who has paid a nomination fee determined by time to time by the Committee shall be eligible for associate membership.
- (2) An application for membership shall be in such form as the Committee shall prescribe from time to time. Upon the acceptance of the application by the Committee and upon payment of the first annual subscription the applicant shall be an ordinary or associate member of the Association as the case may be.

6 SUBSCRIPTIONS & LEVIES:

- (1) The subscription fees for each class of membership shall be such sum as the members shall determine from time to time in general meeting.
- (2) The subscription fees of each class of membership shall be payable annually on 1 July or at such other time as the Committee shall determine from time to time.
- (3) Any member whose subscription is outstanding for more than three months after the due date for payment shall cease to be a member of the Association, provided always that the Committee may reinstate such a person's membership on such terms as it thinks fit.
- (4) The Association may further impose levies upon the members in such sums for each class of membership as the members shall determine from time to time in general meeting.

20. PROXIES:

An ordinary member shall be entitled to appoint in writing a natural person who is also a member of the Association to be his Proxy, and attend and vote at any meeting of the Association.

21. ACCOUNTS:

- (1) The Association shall keep such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Association.
- (2) Signatories shall be the Chairman or the Treasurer together with the other or with one of two other Committee Members appointed by the Committee.
- (3) No monies shall be drawn without the authority of the Committee.
- (4) An Auditor shall be appointed at the Annual General Meeting.

22. PAYMENTS AND INDEMNITY:

- (1) The Committee may recoup any member or other person for out-of-pocket expenses incurred with authority in the interests of the Association.
- (2) The Annual General Meeting may authorise the Payment by way of honorarium or otherwise to any member or other person for services rendered to the association.
- (3) Any person who with authority and in good faith enters into a contract on behalf of the Association shall be indemnified by the Association against any liability there under.

23. WINDING UP:

The Association may be wound up in the manner provided for in the Act.

24. **APPLICATION OF SURPLUS ASSETS:**

In the event of the Association being dissolved, the amount which remains after such dissolution and the satisfaction of all debts and liabilities, shall be paid and applied by the Committee in accordance with their powers to any fund, institution or authority, which is non-profit organisation.

25. **NON-PROFIT CLAUSE:**

The Assets and income of the Association shall be applied solely in furtherance of its objects and no portion shall be distributed directly or indirectly to its members except as bona fide compensation for services rendered or expenses incurred on behalf of the Association.

Constitution & Rules first adopted 29th Sept. 1998.

Constitution & Rules amended with former Clause 24 repealed and new Clauses 24 & 25 as added, adopted 21st Aug. 1992.

Constitution & Rules amended Clause 4 (3) committee members amended to read 4 Committee members (from 3); Clause 12 amended to change financial year to 31st March (from 31st January); amendments adopted 19th April 2002.

CONSTITUTION AND RULES**INGHAM CHICKEN GROWERS ASSOCIATION INC.**

1. The name of the Incorporated Association is INGHAM CHICKEN GROWERS ASSOCIATION INCORPORATED referred to herein as "the Association"
2. In these rules, unless the contrary intention appears-
'Committee' means the Committee of Management of the Association;
'meeting' means a general meeting of members of the Association convened in accordance with these rules;
'member' means a member of the Association;
the 'Act' means the Associations Incorporation Act, 1985;
the 'Regulations' means the Associations Regulations, 1985.
3. **OBJECTS AND PURPOSES:**
The objects of the Association shall be:
 - (a) To protect and promote the interest of members of the above Association;
 - (b) To promote oppose or support legislation or other measures affecting or likely to affect the stability and efficiency of the chicken meat industry;
 - (c) To liaise with Ingham Enterprises S.A. in all matters affecting the production of their chicken meat requirements.
4. **POWERS:**
The Association shall have all the powers conferred by section 25 of the Act save and except such modifications and exclusions as are specified in this rule.
5. **MEMBERSHIP:**
 - (1) There shall be two classes of membership:
 - (a) Ordinary Membership: Any person partner or organisation who has a contract for chicken growing with Ingham Enterprises and who has

except that in the case of a special resolution a majority of not less than three quarters of the members who being entitled to do so vote personally or by proxy at the meeting is required.

18. MINUTES:

- (1) Proper minutes of all proceedings of meetings of the Association and of meetings of the Committee shall be entered within one month after the relevant meetings in minutes books kept for the purpose.
- (2) The minutes kept pursuant to this rule shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.
- (3) Where minutes are entered and signed they shall until the contrary is proved be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.

19. VOTING RIGHTS:

- (1) Subject to these rules each ordinary member present in person or by proxy shall be entitled to one vote.
- (2) A member being a body corporate shall be entitled to appoint one person who need not be a member of the Association to represent it at a particular meeting or at all meetings of the Association. That person shall be appointed by the corporate member by a resolution of its board, which shall be authenticated under its seal. Such a person shall be deemed to be a member of the Association for all purposes until the authority to represent the corporate member is revoked.

7. RESIGNATION:

A member may resign from membership of the Association by giving written notice thereof to the secretary or public officer of the Association. The resignation shall take effect from the date of the receipt of the notice by the Secretary or the Public Officer. Any member so resigning shall be liable for any outstanding subscriptions and levies which shall be recovered as a debt due to the Association.

8. EXPULSION OF A MEMBER:

- (1) Subject to giving a member an opportunity to be heard or to make a written submission, the Committee may resolve to expel a member upon a charge of misconduct detrimental to the interests of the Association.
- (2) Particulars of the charge shall be communicated to the member at least one calendar month before the meeting of the Committee at which the matter will be determined.
- (3) The determination of the Committee shall be communicated to the member in writing, and in the event of an adverse determination the member shall subject to sub rule (4) cease to be a member 14 days after the Committee has communicated its determination to him.
- (4) It shall be open to a member to appeal to the Association in general meeting against the expulsion. The intention to appeal shall be communicated to the secretary or public officer of the Association in writing within 14 days after the determination of the Committee has been communicated to the member. The Committee shall call a general meeting to hear the appeal within 30 days from the date on which the notice of intention to appeal was received by the Secretary or Public Officer.
- (5) In the event of an appeal under sub rule (4) the appellant's membership of the Association shall not be terminated unless the determination of the

reasonable expenses of convening and conducting such a meeting shall be borne by the Association.

(6) Subject to sub rule (7) at least seven days' notice of any general meeting shall be given to members. The notice shall set out where and when the meeting will be held, and particulars of the nature and order of the business to be transacted at the meeting. In the case of an annual general meeting, the order of the business at the meeting shall be the consideration of the accounts and reports of the Committee and the auditors, the appointment of auditors and committee members (if required), and any other business requiring consideration by the Association in general meeting.

(7) Notice of a meeting at which a special resolution is to be proposed shall be given at least 14 days prior to the date of the meeting.

(8) A notice may be given by the Association to any member by serving the member with the notice personally, or by sending it by post to the address appearing in the register of members.

(9) Where a notice is sent by post, service of the notice shall be deemed to be effected if it is properly addressed and posted to the member by ordinary prepaid mail.

17. PROCEEDINGS AT MEETINGS:

(1) Fifteen ordinary members or one half of the total number of ordinary members (whichever is the lesser) present personally or by proxy shall constitute a quorum at any general meeting.

(2) If within thirty minutes after the time appointed for the meeting a quorum of members is not present, a meeting convened upon the requisition of members shall lapse. In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place and if at such adjourned meeting a quorum is not present

thereof shall retire from the Committee but shall be eligible for reappointment.

(5) The Committee may appoint a natural person to fill a casual vacancy, and such a committee member shall hold office until the next annual general meeting of the Association and shall be eligible for reappointment.

(6) A retiring committee member shall be eligible to stand for re-election without nomination but no person not being a retiring committee member shall be eligible to stand for election unless a member of the Association has nominated him in such manner as the Committee shall from time to time prescribe.

(7) If only the required number of persons are nominated to fill existing vacancies, the secretary shall report accordingly to the annual general meeting, and the chairperson shall declare such persons duly elected as committee members.

10. DISQUALIFICATION OF COMMITTEE MEMBERS:
The office of committee member shall become vacant if a committee member is:

- (i) disqualified by the Act;
- (ii) expelled under these rules;
- (iii) permanently incapacitated by ill health;
- (iv) absent without apology from more than three consecutive committee meetings, or more than three committee meetings in a financial year;
- (v) no longer the duly appointed representative of a corporate member.

11. PROCEEDINGS OF COMMITTEE:

(1) The Committee shall meet together for the despatch of business at least twice per year.

(2) Questions arising at any meeting shall be decided by a simple majority.

(3) A quorum for a meeting of the Committee shall be four members.