

Your Ref:

Our Ref: ATL 5/50723

Reply to: Melbourne

Contact: Andrew Lumb
alumb@nevetford.com.au

Nevett *ford*

LAWYERS

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3 June 2015

Attention: Ms Tanya Hobbs

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commissioner
GPO Box 3131
CANBERRA ACT 2601

By Email Only: adjudication@acc.gov.au

Dear Sir

**South Australian Inghams Chicken Growers
Application for Minor Variation of Authorisation A91294**

We act for the South Australian Inghams Chicken Growers Group.

We refer to our recent telephone conversation with Tanya Hobbs and Joanne Palisi and now enclose Application for Minor Variation of Authorisation A91294.

As indicated in our telephone conversation, since the date of the Authorisation, South Australian Farmers Federation (**SAFF**) has ceased to exist. SAFF was the vehicle used by the South Australian Inghams Chicken Growers Group to apply for authorisation on behalf of the members of the group.

Authorisation A91294 was granted to sixteen (16) South Australian Inghams Chicken Growers to collectively bargain with Inghams with respect to growing fees and contract terms, adjustment and review of growing fees and other matters, and resolution of disputes. In clause 4.1 of the Determination, the ACCC extended the Authorisation to future participants in the Collective Bargaining group that also grow or propose to grow chickens for Inghams "*and are members of SAFF*".

It is no longer possible for any members of the Group to be members of SAFF and a minor variation of the Authorisation is sought to delete the reference to membership of SAFF. It is submitted that the words in question add nothing to the intended operation or ambit of the Authorisation and their deletion will only clarify any ambiguity which may exist about the status of growers who have commenced growing chickens for Inghams since the date of the Authorisation and their right to elect to join the collective bargaining process.

It is submitted that this clarification will enhance public benefit by removal of ambiguity with respect to the application and operation of the Authorisation, and that there is no impact on public detriment.

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(1)

Please advise of any other information required.

Yours faithfully

Nevett *ford*



Andrew Lumb

Encl

Form FA

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 91A (1)

APPLICATION FOR MINOR VARIATION OF A NON-MERGER AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91A (1) of the *Competition and Consumer Act 2010* for a minor variation of an authorisation.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of applicant:
(Refer to direction 2)

A91294

INGHAM CHICKEN GROWERS ASSOCIATION INC

- (b) Description of business carried on by applicant:
(Refer to direction 3)

Representative organisation for chicken growers contracted to Inghams Enterprises Pty Ltd in South Australia.

- (c) Address in Australia for service of documents on the applicant:

c/- Nevett Ford Lawyers

Level 16

Rialto South Tower

525 Collins Street

MELBOURNE VIC 3000

2. Minor variation of authorisation

- (a) Description of the contract, arrangement or understanding, or the relevant conduct, for which authorisation was granted, including, but not limited to, the registration number assigned to that authorisation (the original authorisation):

A91294 - Authorisation for South Australian Inghams Chicken Growers to collectively bargain with Inghams with respect to contract terms and conditions, adjustment of growing fees and resolution of disputes.

- (b) Provide a description of the goods or services that relate to the authorisation for which variation is sought:

Chicken growing services.

- (c) Provide details of the variation for which authorisation is sought, including but not limited to identification of differences between the contract, arrangement or understanding, or the relevant conduct, that was originally authorised and the contract, arrangement or understanding, or the relevant conduct, for which a minor variation of authorisation is sought:
(Refer to direction 4)

Deletion of the words “and are members of SAFF” from clause 4.1 of the authorisation in relation to future participants in the collective bargaining group.

- (d) Facts and evidence relied upon in support of the claim that the variation is a minor variation:

South Australian Farmers Federation (SAFF) is no longer in existence and it is not possible for participants in the Collective Bargaining Group, whether present or future, to be members of SAFF. The authorisation is expressed to extend to “future participants in the Collective Bargaining Group that also grow, or propose to grow, chickens for Inghams”, and the words sought to be deleted do not affect this clearly intended operating ambit.

3. Parties to the contract, arrangement or understanding (whether proposed or actual), or conduct, for which variation of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding, or the relevant conduct:

Inghams Enterprises Pty Ltd PO Box 5
Burton Road SALISBURY SOUTH SA 5106
BURTON SA 5110

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

See Annexure A

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

Future members of the Collective Bargaining Group who grow or propose to grow chickens for Inghams.

4. Public benefit claims

- (a) Provide submissions regarding the effect of the minor variation upon the public benefits resulting or likely to result from the original authorisation:

The minor variation will not affect the public benefits resulting from the original authorisation save that it will ensure that the authorisation extends to all persons originally intended to be covered.

(See Direction 6 of this Form)

- (b) Facts and evidence relied upon in support of these claims:

The minor variation has no substantive effect on the operation of the original authorisation.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The material submitted in the original application with respect to market definition continues to apply. However, since that time, Inghams has expanded its South Australian operation to include a number of new farms growing chickens in accordance with free range accreditation.

(See Direction 7 of this Form)

6. Public detriments

- (a) Provide submissions regarding the effect of the minor variation upon the detriments to the public resulting or likely to result from the original authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:

The minor variation will not give rise to any public detriment.

(See Direction 8 of this Form)

- (b) Facts and evidence relied upon in support of these claims:

The minor variation has no substantive effect on the operation of the original authorisation.

7. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicant to provide additional information in relation to this application:

Mr Andrew Lumb

Nevett Ford Lawyers

Level 16
Rialto South Tower
525 Collins Street
MELBOURNE VIC 3000

Dated..... 3 June 2015

Signed by/on behalf of the applicant

..... *Andrew*

(Signature)

..... ANDREW THOMAS LUMB

(Full Name)

..... NEVETT FORD SOLICITORS FOR THE
APPLICANTS

(Organisation)

..... SPECIAL COUNSEL

(Position in Organisation)

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, or the relevant conduct, in respect of which the authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which minor variation of authorisation is sought.

In providing these details:

- (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If minor variation of authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where minor variation of an authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of the likely effect of the minor variation upon those public benefits considered to result or to be likely to result from the original authorisation, including quantification of those effects where possible.
 7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
 8. Provide details of the likely effect of the minor variation upon those detriments to the public, including those resulting from the lessening of competition, which may result from the original authorisation. Provide quantification of these effects where possible.

Annexure A
List of Farms

Names and Address of the Parties on whose behalf this application is made, all of whom carry on chicken growing business:

Grower	Farm Address
Jordan Lane SA Pty Ltd (Leon Bypass, Alan Bittisnich, Dario Nordio, Mike Anderson)	46 Jordan Lane KEPA SA 5259
Skylark Hill Pty Ltd (Leon Bypass, Craig Skinner, Brendan Roberts)	Lot 100 Jordan Lane KEPA SA 5259
Dajmak Pty Ltd (Dominic and Kerry Tripodi)	11 Pinewood Lane TOTNESS SA 5250
Poussin Poultry Pty Ltd (Michel Vidot)	688 Monarto Road PALLAMANA SA 5254
Crizmic Poultry (MS and CH Hampel)	Murray Bridge Farm 125-129 Flagstaff Road WHITE SANDS SA 5253
Murbko Poultry (MS and CH Hampel)	Blanchetown Farms Lot 11 Murbko Road BLANCHETOWN SA 5357
Riverland Free Range Pty Ltd (Luke Trevanion, Richard Sanday, Garry Sanday)	Murrylands Road BLANCHETOWN SA 5357
RLS Enterprises (Aust) Pty Ltd (Raymond Siddall)	239 & 329 Bletchley Road STRATHALBYN SA 5255
Siddall Investments Pty Ltd (Raymond Siddall)	95 Denny Road LANGHORNE CREEK SA 5255
Kepa Poultry (RG Edge & SM Finlay)	1067 Kepa Road MURRAY BRIDGE SA 5253
Apek Poultry (RG Edge & SM Finlay)	1067 Kepa Road MURRAY BRIDGE SA 5253

Orland Poultry Pty Ltd ATF ABN 82 128 730 183 (George & Marianne Anthony and Steve & Deborah Daysh)	338 Orland Road TAILEM BEND SA 5260
Pitstop Poultry Pty Ltd (Stephen Reed)	Lot 2 Old Dublin Road DUBLIN SA 5501
Big Bird Investments Pty Ltd (Stephen Reed)	Lot 2 Notts Well Road PAISLEY SA 5357
Artopta (Paul and Scott Baker)	492 Old Dublin Road MALLALA SA 5502
Eagle Poultry Pty Ltd (Sham Sharma)	832 Monarto Road MONARTO SA 5254
Southern Cross Farms Australia Pty Ltd ABN 98 193 717 052 (David Shepherd)	460 Woods Road OWEN SA 5460
Southern Cross Farms Australia Pty Ltd ABN 98 193 717 052 (David Shepherd)	637 Water Tower Road OWEN SA 5460
Southern Cross Farms SA Pty Ltd ABN: 28 112 121 646 (David Shepherd)	1894 Days Hill Road OWEN SA 5460
Southern Cross Farms SA Pty Ltd ABN: 28 112 121 646 (David Shepherd)	2024 Days Hill Road OWEN SA 5460
R.A & J.L Rothe (Gordon Barolo, Raelene Janet Barolo, Ray August Rothe)	3201 Old Princes Highway MONARTO SA 5254
Southern Poultry Pty Ltd (Robert Sherrah)	59 Eucalyptus Road BURDETT SA 5253
Pineview Poultry Pty Ltd (Robert Sherrah)	Pine View Road BURDETT SA 5253
Hilltop Poultry Pty Ltd (Robert Sherrah)	Pine View Road BURDETT SA 5253
Hunter Poultry Pty Ltd (Robert Sherrah)	1665 Hunter Road SWAN REACH SA 5354

PR & RE Schmidt ABN 60 145 102 959 (Philip Robert Schmidt, Ruth Eunice Schmidt, Paul Matthew Schmidt)	Anderson Road ECHUNGA SA 5153
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