

18 November 2020

STATEMENT

**Determination by the NSW Civil and Administrative Tribunal in relation to
Forbidden Foods Pty Ltd v Rice Marketing Board for the State of New South
Wales (No 3) [2020] NSWCATAD 257**



The Rice
Marketing
Board

On 21 October 2020, the NSW Civil and Administrative Tribunal (the Tribunal) issued a final decision in relation to *Forbidden Foods Pty Ltd v Rice Marketing Board for the State of New South Wales (RMB) (No 3) [2020] NSWCATAD 257* under the *Government Information (Public Access) Act 2009* (GIPA Act).

The final decision upheld aspects of the RMB's appeal, however the Tribunal strengthened the rationale for the original decision rather than reversing the related decisions and directed that information originally determined could be withheld on grounds of confidentiality, must now be released.

As a statutory Board, the RMB is bound by a range of laws, acts and regulations, one of which is the *GIPA Act* – this Act dictates that unless there is an overriding public interest against disclosure of information requested of Government entities such requests should be met.

While the RMB is disappointed with the final ruling, it has released the documents to the applicant as ordered by the Tribunal.

The RMB will continue to administer the *Rice Marketing Act 1983* including monitoring the performance of SunRice as the holder of the Sole and Exclusive Export Licence, in accordance with its Objects, which are:

- To encourage the development of a competitive domestic market for rice
- To ensure the best possible returns from rice sold outside Australia based on the quality differentials or attributes of Australian grown rice; and
- To liaise with and represent the interests of all NSW rice growers in relation to the Board's functions and objects.

For further information please contact Board Secretary Carol Chiswell on 02 6953 3200 or email secretary@rmbnsw.org.au.

Authorised by: John Culleton, Board Chair, Rice Marketing Board for the State of New South Wales, 57 Yanco Avenue, Leeton NSW 2705

Details of the case

In 2018 the Rice Marketing Board for the State of New South Wales (RMB) received an access application under the *Government Information (Public Access) Act 2009* (GIPA Act) on behalf of Forbidden Foods Pty Ltd, a Victorian company specialising in food products including rice, with associations to major overseas companies competing in international rice markets. Forbidden Foods sought access to a broad range of documents relating to the decision-making process of the RMB, relating to the RMB's decisions to grant the Sole and Exclusive Export Licence (SEEL), for the period January 2013 to February 2018.

The RMB considered the request for information and decided to release some but not all of the information. In late 2018, the decision was reviewed by the NSW Information Commissioner at the applicant's request. The Information Commissioner concluded that the RMB's decision was not properly justified and recommended that the RMB make a new decision.

After consulting two third parties as allowed by the GIPA Act, the RMB granted access to part but not all of the documents, on the basis that it would reasonably be expected to have one or more of the following effects:

- found an action against an agency for breach of confidence or otherwise result in the disclosure of information provided to an agency in confidence;
- Prejudice the conduct, effectiveness or integrity of any audit, test, investigation or review conducted by or on behalf of an agency by revealing its purpose, conduct or results;
- Reveal the commercial-in-confidence provisions of a government contract;
- Diminish the competitive commercial value of any information to any person; and
- Prejudice any person's legitimate business, commercial, professional or financial interests.

The new decision was then appealed by the applicant, to the Tribunal. The initial decision by the Tribunal, issued in January 2020, acknowledged that some of the documents that the RMB was unwilling to release were identified as confidential and had some commercial sensitivity, but decided that, on balance, it was in the public interest to release the documents to the public, with some redactions.

The RMB appealed the decision on the basis of legal errors. In September 2020 the NCAT Appeal Panel agreed that an error of law had occurred in that two sets of documents had the same or similar information yet only one set of documents was ordered to be redacted. The Tribunal member who decided the original case was ordered to re-consider their decision.

The full details of the legal case can be found at www.caselaw.nsw.gov.au at the reference 'Forbidden Foods v RMB [2020] NSW CATAD 257'.

The NSW rice industry

NSW is overwhelmingly the largest producer and exporter of Australian-grown rice but Australian grown rice represents a very small percentage of rice traded internationally. There are no trade restrictions applied to the importation of rice into Australia but many of the countries that SunRice exports to impose significant restrictions in the form of tariffs and/or quotas. There is no futures market for rice and there is low visibility of pricing and limited publicly available information on prices and market activity.

In the absence of a global rice market, where rice can be traded without tariffs and quotas, and given the relatively small scale of rice production in Australia, the RMB considers that the interests of NSW rice growers are best served by having NSW-grown rice marketed by a single agent. Accordingly, the RMB has issued a Sole and Exclusive Export Licence to Ricegrowers Limited, trading as SunRice. The RMB also oversees the domestic marketing of NSW-grown rice and does this through what are currently 12 licenced authorised buyers.

To ensure that SunRice acts in the best interests of NSW rice growers, the RMB monitors and assesses SunRice's performance at least annually. Information that is provided to the RMB by SunRice forms the basis of this assessment, and includes commercially sensitive information.

The Tribunal's final ruling requires the public release of information that was provided to the RMB, in its capacity as the regulator of marketing of rice grown in NSW, and as such the related information is now available not just to the applicant but also the SunRice's overseas competitors.

ends.