

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974

Notice pursuant to section 91B(3)

In relation to authorisation A58
Royal Australian Institute of Architects

1. Introduction

- 1.1. The Australian Competition and Consumer Commission (the ACCC) is the Commonwealth agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business. This results in a greater choice for consumers with regard to price, quality and service.
- 1.2. The Act, however, allows the ACCC to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an 'authorisation'.
- 1.3. Broadly, the ACCC may 'authorise' parties to engage in anti-competitive conduct where it is satisfied that the public benefit flowing from the conduct outweighs any public detriment from any lessening of competition.

Revocation of authorisations

- 1.4. Section 91B(3) of the Act provides that the ACCC may initiate consideration of the revocation of an authorisation if it appears to the ACCC that:
 - the authorisation was granted on the basis of evidence or information that was false or misleading
 - a condition of the authorisation has not been complied with or
 - there has been a material change in circumstances since authorisation was granted.
- 1.5. To initiate consideration of the revocation of an authorisation the ACCC is required to write to interested parties advising them of its intention to consider the revocation of the authorisation, the basis on which revocation is being proposed and invite submissions in respect of the revocation.
- 1.6. After considering any submissions received from interested parties in relation to the proposed revocation, the ACCC is required to issue a written determination either revoking or not revoking the authorisation.
- 1.7. This document is a notice to interested parties pursuant to section 91B(3) of the Act, informing them that it appears to the ACCC that there have been

material changes in circumstance in relation to authorisation A58 since authorisation was granted. Accordingly, the ACCC is considering whether or not to revoke authorisation A58.

2. Authorisation A58

- 2.1. The ACCC's predecessor, the Trade Practices Commission (the TPC) granted authorisation A58 to the Royal Australian Institute of Architects (the Institute) on 7 September 1984.
- 2.2. The Institute was granted authorisation in respect of the arrangements provided for in the following documents:
 - Code of professional conduct (the Code)
 - Memorandum and articles of association (the Articles)
 - Regulations and by-laws (the Regulations)
 - Guidelines for RAI A endorsed architectural competitions (the Guidelines) and
 - Architects, services, conditions and fees, which included a fee guide.
- 2.3. A copy of the TPC's determination is attached. The documents referred to at paragraph 2.2 are available for download from the ACCC's website at: www.accc.gov.au.
- 2.4. In April 2000, the Institute applied to the ACCC under section 91A of the Act to vary authorisation A58. The proposed amendments included variations to both the Code and the Articles.
- 2.5. In October 2000, the ACCC informed the Institute that it considered that the combined effect of the proposed variations would likely constitute a material change in the effect of the authorisation and therefore the application was denied.
- 2.6. In July 2002, the Institute again applied to the ACCC under section 91A of the Act to vary authorisation A58. On this occasion the Institute only proposed to amend the Code but informed the ACCC that it had adopted the previously proposed amendments to the Articles.
- 2.7. In November 2002, the ACCC informed the Institute that its application for a minor variation was again denied.

3. Material changes in circumstance identified by the ACCC

- 3.1. The ACCC is of the view that since authorisation A58 was issued, changes have occurred that are likely to have impacted upon the public benefit and public detriment resulting from the authorised conduct. These changes are outlined below.

Changes to the authorised conduct

- 3.2. In 1984 the TPC granted an authorisation that provided the Institute with immunity to make and give effect to certain arrangements the nature of which were described in the documents outlined in paragraph 2.2 above. Essentially, the immunity enabled the Institute to promulgate and enforce its Code of conduct and to disseminate other information including a scale of fees and a fee guide to its members.
- 3.3. It appears from the information provided by the Institute at the time of its applications for minor variations and from information obtained more recently from the Institute by the ACCC that the documents outlined in paragraph 2.2 have changed significantly both in form and in substance.
- 3.4. In particular, it appears that:
- the Code has been modified to include additional provisions
 - provisions in the Regulations relating to an applicant for membership's right to appeal an unfavourable decision have been amended
 - provisions in the Regulations relating to the disciplinary procedure have been amended and
 - the fee guide has been altered.
- 3.5. In addition, it appears that the information contained in each of the other authorised documents (and therefore the authorised conduct) has been removed, amended or superseded to some degree since 1984.

Changes in regulatory environment

- 3.6. Since the TPC granted the authorisation in 1984, the regulatory environment in which the Institute and architects operate has changed.
- 3.7. In 1984, state and territory legislation tended to be more restrictive than they are currently, particularly in relation to the conduct of architects. At the time the authorisation was granted architects were often limited by statute with regards to: how and when they could advertise their services; their access to an appeals process; and in some instances what they could charge.
- 3.8. Most of the restrictive aspects of this legislation have now been removed which has resulted in industry participants having far more autonomy and freedom in the way they conduct their businesses.

Other changes

- 3.9. In 1984 the TPC considered that a fee guide and scale of fees was helpful and important as they provided a reference point which allowed less experienced clients and architects to better understand industry costs and prices.
- 3.10. Since that time there have been significant advancements which have reduced the need for industry organisations like the Institute to provide any

form of guidance in relation to recommended fees. For example, there has been an exponential increase in the volume and utility of information available to both consumers and businesses through mediums such as the internet.

Accepted public benefits of A58

- 3.11. In addition to the public benefit recognised by the TPC of the Institute providing inexperienced clients and new architects with guidance in relation to fees for architectural services, the TPC was of the view that the authorised arrangements would also produce further public benefits including:
- providing information relating to an architect's responsibilities and standards of practice such as those included in the Code and
 - the potential for the 'Institute's guidelines for competition' to enhance the promotion and advancement of architecture.

Effect of changes on public benefit/detriment

- 3.12. The alterations and amendments made by the Institute to the Code, the Regulations, the fee guide and the other documents which described the authorised conduct are likely to have affected the public benefit originally recognised by the TPC.
- 3.13. That is, the public benefits which the TPC considered flowed by including certain information with the authorised conduct (fee guide, competition guidelines etc) are likely to have reduced by virtue of that information no longer being disseminated in its authorised form.
- 3.14. For example, the TPC considered that authorising the information contained in the 'Guidelines for RAIA endorsed architectural competitions' would provide a public benefit by promoting the advancement of architecture. However, because these Guidelines are no longer disseminated in their approved form, they no longer provide the accepted public benefit and therefore the overall public benefits of the arrangements may have reduced.
- 3.15. In addition, it is apparent from the changes to the legislation regulating architects that the state and territory governments have been moving away from placing restrictions on architect conduct. This may indicate therefore that the benefits originally recognised by the TPC from the Institute having a Code of conduct for its members may have also reduced.
- 3.16. Finally, increased access to industry information through mediums such as the internet is likely to have reduced the benefits of the Institute disseminating a fee guide or any directive to its members relating to recommended fees.

4. Notice

- 4.1. It appears to the ACCC that the matters outlined above constitute a material change in circumstance since authorisation A58 was granted. Accordingly, pursuant to section 91B of the Act, the ACCC is considering the revocation of authorisation A58.
- 4.2. Interested parties are invited to make submissions on these matters. Any submission should be lodged by **close of business Friday 8 October 2004**.
- 4.3. Submissions should be in writing and addressed to:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602
- 4.4. Submissions may also be lodged by e-mail to adjudication@accc.gov.au or by facsimile to (02) 6243 1211.
- 4.5. Interested parties may choose to address any or all of the following issues:
 - changes to the authorised conduct
 - changes to the regulatory and competitive environment in which architectural services are supplied
 - changes to public benefit and detriment flowing from the authorisation since it was granted and
 - any other issues that may be relevant to the ACCC's consideration of this matter.
- 4.6. Submissions will be placed on the ACCC's Public Register.