



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2002/1076
Contact Officer: Liam Stewart
Contact Phone: 02 6243 1279

8 September 2004

Mx XXXXXXX
XX XXXXXXX St
XXXXXX 4XXX

Dear

Review of authorisation A58 granted to the Royal Australian Institute of Architects

I refer to the above authorisation, granted to the Royal Australian Institute of Architects (the Institute) by the Trade Practices Commission (the TPC) in 1984. The TPC is now known as the Australian Competition and Consumer Commission (the ACCC).

By way of background, 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, resulting in a greater choice for consumers in price, quality and service.

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'.

Broadly, the ACCC may 'authorise' businesses to engage in anti-competitive arrangements or conduct where it is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment. The ACCC conducts a comprehensive public consultation process before making a decision to grant or deny authorisation.

Revocation of an authorisation

Under section 91B of the Act, the ACCC may consider whether it should revoke an authorisation at any time after it has been granted if it considers that, amongst other things, there has been a material change of circumstances since the authorisation was granted.



Specifically, to initiate the consideration of the revocation of an authorisation the ACCC is required to inform interested parties by Notice in writing that it is considering revoking the authorisation, indicate the basis on which the consideration to revoke is being proposed and invite submissions on the matter from those interested parties.

After considering any submissions received from interested parties and after making an assessment as to whether the authorisation remains in the public interest, the ACCC may make a determination in writing revoking the authorisation or deciding not to revoke the authorisation.

Conduct authorised

The Institute was granted authorisation in respect of the arrangements provided for in the following documents:

- Code of professional conduct
- Memorandum and articles of association
- Regulations and by-laws
- Guidelines for RAI A endorsed architectural competitions and
- Architects, services, conditions and fees, which included a fee guide.

Essentially, the Institute was granted immunity from the Act to promulgate and enforce its Code of professional conduct and to disseminate other information relating to architectural services, including a scale of fees and a fee guide, to its members and the public.

Review of authorisation A58

The ACCC considers that a material change of circumstances appears to have occurred since granting authorisation A58 to the Institute. Accordingly, the ACCC proposes to initiate a review of this authorisation and a Notice to this effect is enclosed for your information. Reasons why the ACCC considers that a material change of circumstances has occurred are detailed in the Notice.

Please note that the issue of this Notice is only the first step in the review process, as required by the Act to initiate consultation with interested parties. The ACCC has not formed a view as to whether it will decide to revoke, or decide not to revoke, the authorisation.

Your views are sought

The ACCC invites you to make a written submission regarding the proposed revocation of authorisation A58. If you wish to make a submission, please address it to:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Alternatively, submissions may be lodged by fax on (02) 6243 1211 or via e-mail at adjudication@accc.gov.au.

The ACCC requests that you lodge any submission you wish to make by **close of business Friday, 8 October 2004**.

As the authorisation process is a public and transparent one, submissions will be placed on the ACCC's Public Register. You may request that information you provide in a submission to the ACCC be treated as confidential and not placed on the Public Register. Information excluded from the Public Register for reasons of confidentiality will still be considered by the ACCC when reaching its decision. Guidelines for seeking confidentiality are enclosed at attachment A for your information.

A copy of this letter, and the enclosed Notice, will be placed on the ACCC's Public Register.

If you have any questions about this matter, please contact Liam Stewart on (02) 6243 1275.

Yours sincerely,

Scott Gregson
Director
Adjudication Branch

Attachment A

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or process
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page and
- (b) where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the Commission deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act*.