

Letter sent to attached list.



**Australian
Competition &
Consumer
Commission**

Our Ref: A90880
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15 March 2005

Mr Bob Stanton
Chairman
Council of Small Business Organisations of Australia
PO Box E445
Kingston ACT 2604

Dear Mr Stanton

Re: Application for Minor Variation to Authorisation A90880 lodged by the Mortgage Industry Association of Australia

The Australian Competition and Consumer Commission (the ACCC) has received an application for minor variation to Authorisation A90880 from the Mortgage Industry Association of Australia (MIAA).

The ACCC seeks your comments on MIAA's application for minor variation of Authorisation A90880 (hereafter referred to as the Application). Comments can be provided to the ACCC by email, fax or posted to the contacts shown at the end of this letter.

Background

MIAA states that it is the peak body for the mortgage industry in Australia with approximately 5740 members, being 75% of Australian mortgage brokers, lenders and managers and 40-50% of Australian loan writers.

Authorisation A90880 was granted by the ACCC on 18 February 2004, in relation to the MIAA's Disciplinary Rules which are part of the regime governing the conduct of its members. Essentially, these Disciplinary Rules enforce the MIAA's Code of Practice, which in turn outlines the standards that members have to adhere to and to which all MIAA members must agree to be bound.



Specifically, the Disciplinary Rules outline the process for investigation of complaints, expulsion of members and refused applications for membership and accreditation. In addition, they contain information about the MIAA Tribunal. Further details of the Disciplinary Rules and the ACCC's determination authorising the rules are available from the ACCC's website at <http://www.accc.gov.au> and follow the public registers link to the authorisations public register.

While the ACCC authorised the Disciplinary Rules, authorisation was not sought, or granted, for the MIAA's Code of Practice or other parts of its governance regime.

The authorisation process

The ACCC is the Australian Government 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, recognises that the public interest may not always be met by the operation of competitive markets. The authorisation process in the Act addresses this eventuality by allowing the ACCC to grant immunity from the application of many of the restrictive trade practices provisions of the Act in certain circumstances. In order to grant authorisation the ACCC must generally be satisfied that the public benefit arising from the particular conduct outweighs any detriment, particularly anticompetitive detriment, arising from the conduct.

Minor variation

The Act allows a party to an existing authorisation to apply for a minor variation to that authorisation. Before the ACCC can progress an application for minor variation, it must be satisfied that the variation is minor and does not involve a material change in the effect of the authorisation.

If the ACCC accepts the variation is minor, it may only make the variation to the existing authorisation if it is satisfied that, in all the circumstances, the variation would not result, or would be likely not to result, in a reduction in the benefit to the public that arose from the original authorisation.

In assessing the likely impact of a minor variation application on the existing overall benefit to the public of an authorisation, the ACCC undertakes a public consultation process seeking comments on the application from interested parties. Following the consultation process, the ACCC issues a final decision. No draft decision is issued in response to minor variation applications.

The Application

MIAA seeks to vary authorisation A90880 to reflect changes to its Disciplinary Rules since authorisation was originally granted. A copy of MIAA's Application, including a marked up version of the Disciplinary Rules showing the changes, and a clean copy of the rules incorporating the relevant changes, is available at the ACCC's website at <http://www.accc.gov.au> and follow the public registers link to the authorisations public register.

The Application also includes amended copies of the MIAA's Code of Practice and Constitution as well copies of the MIAA's Advertising Guidelines and Code on Alternative Forms of Remuneration, both of which have recently been added to the Code of Practice. While these documents do not form part of the current Application, given that they are intrinsically related to the Disciplinary Rules, they are provided as background information.

Your views are sought

The views of interested parties are sought on the following aspects of the Application.

Minor variation

To assist the ACCC in its consideration of whether the variation sought in the Application is in fact a minor variation, that is, it does not involve a material change in the effect of the authorisation, you are invited to make a written submission to the ACCC regarding the likely effect in broad terms of the proposed variation on Authorisation A90880.

Assessment of minor variation

Should the ACCC conclude that the proposed changes to Authorisation A90880 constitute a minor variation, the ACCC is then required to determine whether the proposed variation would result, or would be likely to result, in a reduction in the benefit to the public that arose from the original authorisation.

To assist the ACCC in its consideration of MIAA's Application, you are invited to make a written submission to the ACCC regarding the likely public benefits and effects on competition of the proposed variation to Authorisation A90880.

Providing submissions to the ACCC

The ACCC asks for submissions to be in writing so they can be made publicly available.

Submissions are placed on a public register and may be also placed on the ACCC's website located at <http://www.accc.gov.au>. The ACCC may, where it is considered appropriate, supplement written submissions with discussions with relevant parties on a mutually convenient basis.

Should you lodge a submission with the ACCC you may request that information included in the submission be treated as confidential and not placed on the public register or website. The ACCC may take confidential information into account during its assessment of an authorisation application. Guidelines for seeking confidentiality are enclosed for your information.

If you wish to lodge a submission would you please address it to:

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


Submissions can also be lodged by e-mail to adjudication@acc.gov.au or faxed on (02) 6243 1211.

If you wish to provide a submission in relation to MIAA's application for minor variation, please do so by **Friday, 8 April 2005**.

If you would like a hard copy of the Application, or if you have any questions in relation to this letter, please contact the officer within the ACCC responsible for this matter, Ms Jaime Norton, on (03) 9290 1885.

Yours sincerely



 Gavin Jones
A/g Director
Adjudication Branch

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*.