



**Australian
Competition &
Consumer
Commission**

Our Ref: C2005/407
Your Ref: Accc/miaa/variation
Contact Officer: Michael Green
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1 September 2005

Mr Hank Spier
Spier Consulting
92 Jervois Street
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Dear Mr Spier

**Re: Mortgage Industry Association of Australia (MIAA) application for
minor variation of authorisation A90880**

I refer to the above mentioned application for minor variation of authorisation A90880 lodged with the Australian Competition and Consumer Commission (the ACCC) on 3 March 2005. The purpose of this letter is to raise concerns about some of the proposed variations to the MIAA's Disciplinary Rules.

As you are aware, a minor variation in relation to an authorisation is defined as a single variation that does not involve a material change in the effect of the authorisation. The ACCC may only grant a minor variation where it is satisfied that the variation would not result in a reduction of the net public benefit arising from the authorisation.

The majority of the changes to the MIAA Disciplinary Rules appear to be minor in nature. There are however some variations that I consider may be more substantial, namely:

- The introduction of the Board's discretion to hear appeals under the Constitution in relation to refused membership, at Rule 3.2.1.
- The ability of the Board or State Council to act under the Constitution to suspend, censure or expel any Member regardless of the status or decision of an appeal to the Tribunal as provided under Rule 4.7.1A.
- The introduction of new penalties at Rule 4.7.3 and in particular the unlimited nature of some of those penalties.
- The introduction of the Tribunal's ability to make retrospective decisions with respect to penalties at Rule 4.8.3.



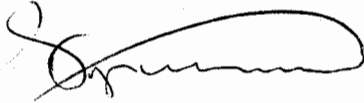
I am concerned that each of the proposed variations identified above may be of sufficient substance and impact sufficiently upon affected parties so as to go beyond being a minor variation.

In its determination of 18 February 2004, the ACCC noted the relevance of procedural fairness in the disciplinary rules for which authorisation is sought when considering the potential detriment arising from the notified arrangements. I am concerned that the changes identified above may have an impact on the procedural fairness of the MIAA disciplinary rules. In this regard, my concerns are also likely to be relevant to the ACCC's assessment of the impact of the proposed variations on the net public benefit arising from the authorisation.

The ACCC is otherwise in a position to make its decision in relation to the MIAA's requests for minor variation. Before making its determination, the ACCC would be pleased to receive any comments you may have in relation to the concerns identified above. I would appreciate receiving your submission in relation to these issues by **cob 15 September 2005**.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Michael Green on 03 9290 1960.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Gregson', with a large, sweeping flourish at the end.

Scott Gregson
A/g General Manager
Adjudication Branch