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Mr Scott Gregson
General Manager
Adjudication
ACCC
PO Box 1199
DICKSON ACT 2602

9 September 2005

Dear Mr Gregson,

Re MIAA application for minor variation of authorization A90880.

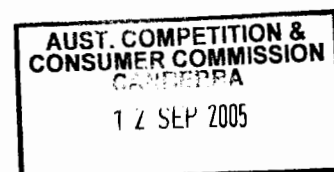
Thank you for your letter of 1 September 2005 in relation to the above.

You asked for comments on four of the minor variations to the MIAA Disciplinary Rules. You make the point that procedural fairness was a major factor when the Disciplinary Rules were authorized by the ACCC in February 2004. You express some concern that some of the minor variations may offend procedural fairness.

The MIAA would strongly endorse the view that procedural fairness is most important and the whole MIAA Governance regime with its arms length treatment of complaints and appeals against refusal to admit to membership is structured to facilitate that. As part of the regime some discretion is left with the Tribunal to ensure flexibility and timely handling of matters that are referred to it.

You ask about the following variation to the Disciplinary Rules,

- **Rule 3.2.1-** this change was to fit in with what was in the Constitution but as long as a Tribunal has been appointed such powers will not be utilized. It is perhaps best not in the Rules, the MIAA can rely on the Constitution should there be a situation that there is no one appointed to the Tribunal. Consideration will be given to deleting that variation.
- **Rule 4.7.1A-** largely the same reason as above and consideration will be given to deleting that Rule.

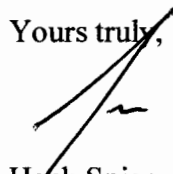


- **Rule 4.7.3-** this Rule is seen as important for the effective operation of the Tribunal. It is felt inappropriate to set limits on penalties in the few cases where that is relevant. It is difficult to ascertain appropriate limits at this point in time but may do so once there are some precedents set by the Tribunal. To date no financial penalties, for instance, have been imposed. I might add that this Rule is not all that different to the previous one authorized by the ACCC, except principally the issue of the possibility of a member being ordered the Tribunal to pay a financial contribution.
- **Rule 4.8.3-** this Rule was added to overcome a fairness situation. Until the changes being considered by the ACCC the Tribunal, in order to impose any sanctions, such as the introduction of a compliance program, had to find “misconduct”. The Tribunal suggested to the MIAA that it would be appropriate to have Rules that provided for effective market place remedies but did not necessarily always need a condition precedent of a finding of “misconduct”. Such a Rule came into force in late 2004.

It became evident that in a few cases that the Tribunal had found “misconduct” but would not have done so if the amended Rules had been in place. Hence Rule 4.8.3 was added to give the Tribunal, and only the Tribunal, the power to revisit the sanction in such a situation. To date this Rule has only been utilized once and in the situation described above.

I trust that the above is of assistance. I note that you are otherwise in a position to make a decision.

Yours truly,



Hank Spier
For the MIAA.