
FACSIMILE TRANSMISSION

DATE: 22.11.2005
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Message:

Dear Mr Wood,

Please see the following letter.

Regards,

Sheridan de Kruiff



Australian
Competition &
Consumer
Commission

Our Ref: C2005/1429
Contact Officer: Sheridan de Kruiff
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22 November 2005

Mr Andrew Wood
Partner
Hunt & Hunt Lawyers
GPO Box 834
Brisbane QLD 1001

By facsimile: 07 3221 4356

Dear Mr Wood

**Recruitment & Consulting Services Association Ltd (RCSA)
Application for Minor Variation to Authorisation A90829**

I refer to your facsimile dated 27 October 2005.

I would like to confirm that the ACCC is currently conducting its assessment of the application for minor variation. In this regard, I write to seek additional information to assist the ACCC in assessing the public benefits and detriments of the proposed changes to the Disciplinary and Dispute Resolution Procedures.

The issues on which the ACCC would appreciate your responses are outlined below.

4.1 – Intervention Process

Please provide further details regarding the identity (including the appointment process) and the duties, role and function of the Ethics Registrar.

Please elaborate on the intervention process in general and its intended practical application. In particular, I draw your attention to clauses (d) and (e). On the face of it, the parties will firstly be contacted *independently* by the Ethics Registrar to discuss the dispute (d). However, clause (e) implies that the parties will agree on a time-line to resolve the dispute – this does not flow naturally from clause (d) which only calls for parties to communicate with the Ethics Registrar, and not each other. Also in clause (e), please clarify exactly what is meant by the ‘RCSA Member’ – that is, if both parties are members, which of the disputing parties is responsible for notifying the Ethics Registrar?



4.5 (xii) – Proceedings Generally

In your facsimile, you state that the intent of clause 4.5(xii) is directed at having matters heard without *legal* representation in order to reduce the cost, complexity and formality of proceedings where it is possible to do so. The ACCC accepts that in accordance with the Australian Standard (AS4269), fundamental characteristics of any dispute resolution system include simplicity and cost efficiency.

However, we note that the clause as currently worded has a broad effect - preventing any third party representation (unless an exception is made). There is no indication that the clause is intended to only preclude *legal* representation. We also note that AS4269 sets out a number of fundamental characteristics of a dispute resolution system, including 'fairness and reasonableness' (5.4(h)(i)) and 'easy access' (5.4(f)).

The ACCC considers that in many situations allowing a party to have a non-legal third party representative would not add to the cost, complexity or formality of proceedings. Indeed, it considers that in certain situations it may make the process more just and efficient.

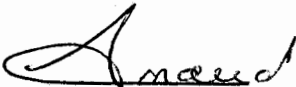
At present, the ACCC is not convinced that the insertion of clause 4.5(xii) as currently worded constitutes a minor variation to the authorisation. We suggest that the RCSA consider amending the clause to specify it is only intended to preclude legal representation rather than all third party representation.

The ACCC would appreciate your client's response to these issues as soon as possible and in any event no later than **cob Friday 25 November 2005**.

Should you have any queries in relation to this matter, please contact Sheridan de Kruiff on 02 6243 1236

A copy of this letter has been placed on the public register.

Yours sincerely



Isabelle Arnaud
Director, Adjudication