



Hunt & Hunt

LAWYERS

Our Ref: JEC:ACW 10011996
Direct Dial: 3231 2490
Direct Fax: 3231 8490
Email: James.Clarke@hunt-hunt.com.au
Your Ref: C2005/1429

2 December 2005

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2062

BY FACSIMILE: (02) 6243 1211

RCSA Application for Minor Variation

We refer to your facsimile dated 28 November 2005.

Our client has adopted your suggestions in relation to clause 4.1 – Intervention Process and clause 4.5(xii) - Proceedings Generally of the Disciplinary and Dispute Resolution Procedures. We enclose copies of the amended clauses 4.1 and 4.5(xii) for your consideration as part of the application process.

Should you have any further questions, please do not hesitate to contact us.

Yours faithfully
HUNT & HUNT


Andrew Wood

Partner

Author: James Clarke

JEC10011996 1058077v1

ABN 95 591 906 639

Central Plaza Two, Level 23, 66 Eagle Street, Brisbane 4000, Australia • Telephone: (61-7) 3231 2444 • Facsimile: (61-7) 3221 4356
G.P.O. Box 834, Brisbane 4001 • DX 256, Brisbane • www.hunthunt.com.au

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1. Disciplinary & Dispute Resolution Procedures

4.1 *Intervention Process* - amendment recommended by the ACCC - 28th November 2005

(a) *When a concern is raised at a Region level or through the Head Office of the RCSA, it is referred to the Ethics Registrar. The Ethics Registrar requests a brief email outlining the concerns raised and the parties involved.*

(c) *The Ethics Registrar checks that the party against whom the concern is raised is a Member of the RCSA.*

(d) *The Ethics Registrar prepares a sequence of events/summary in relation to the concern and confirms with the complainant that these are correct and can be forwarded to the Member against whom the complaint has been raised.*

(e) *The Ethics Registrar notifies the Member by email, letter and fax that a concern has been raised, and provides the Member with the sequence of events/summary.*

(f) *The Member is given a time frame in which to respond, usually seven business days, and the complainant is notified that this has occurred.*

(g) *When the Ethics Registrar receives the response, the following may occur:*

(i) *as a result of the intervention the parties may have resolved the dispute with no further action required;*

4.1.f.i.1 *if this occurs both parties are required to advise the RCSA Ethics Registrar of the outcome.*

4.1.f.i.2 *the RCSA will contact both parties, in writing, to confirm agreement.*

(ii) *there is a clear need for the Ethics Registrar to seek information from other parties before all the information is available - permission may be sought to do this.*

(iii) *It is here that the parties will agree via the Ethics Registrar, or between themselves, the timeline for resolving the dispute - depending on the matter and whether it can be resolved at this point.*

- (iv) *there is still a dispute regarding the facts and the party who raised the concern wants to proceed to a formal complaint;*
- 4.1.f.iv.1 *the RCSA Ethics Registrar will ascertain whether the complainant wants to lodge a complaint or dispute notification in accordance with the RCSA Disciplinary & Dispute Resolution Procedure.*
- (v) *RCSA Ethics Registrar notifies the complainant as to their opportunity to proceed to a formal complaint and provides the necessary paperwork.*
- (h) *If the matter proceeds to a formal complaint, the timelines are established as part of the complaints procedure.*
- (l) *The complainant will initially set the timeline for when it wants the dispute resolved, however this will require negotiations by the Registrar as the complainant's expectations can often be unrealistic.*
- (j) *If both parties are Members of the RCSA, the complainant Member will initially set the timeline.*
- (k) *If the complainant wishes to advance the matter to a formal complaint, the intervention process is terminated and a complaint form is issued. All material gathered as part of the intervention is provided to the Region Council to assist in determining whether the matter should be addressed by the Region Ethics Committee.*

- (ii) to be heard;
- (iii) to know whether the Code has been observed;
- (iv) to provide and request all relevant material to support or respond to the complaint or dispute notification;
- (v) to be informed of the criteria and processes for determining the complaint or dispute, including avenues for further review;
- (vi) to be informed of the response of any party against whom allegations or cross allegations are made;
- (vii) to be informed of the outcome and reasons for that outcome;
- (viii) to have the complaint or dispute heard and determined independently so far as is practicable;
- (ix) to maintain the confidentiality of any confidential information;
- (x) to maintain privacy so far as is practicable in accordance with the National Privacy Principles and subject to maintaining the visibility and remedial objectives of publishing the names and contraventions of persons who are found to have contravened the Code;
- (xi) to have the matter disposed with as little cost, formality and delay as may be consistent with the requirements of fairness.

amendment recommended by the ACCC - 28 November 04

- (xii) *the general intent should be that matters should be heard without legal representation, where possible and the parties involved participate directly with the Committee;*
- (xiii) *disputes are to be finalised, using whatever submissions are available, by the Ethics Committee if they are abandoned by the complainant;*
- (xiv) *any lapsed complaint should be finalised, using whatever submissions are available, by the Ethics Committee.*