



30<sup>th</sup> November 2010

Australian Competitor and Consumer Commission  
Attn: David Harfield

Transmitted by Email

Re: Attendant Care Industry Association of NSW (ACIA) - Exclusive dealing notification  
N95116

Dear Sir,

We refer to your letter of the 16/11/2010 on the above subject. In addition to our letter (and support evidence) of the 21/10/2010, we would like to make the following comments.

We confirm that we are an interested party, on the basis that we are one of the certification companies, which had applied to ACIA for endorsement, but were rejected.

**Size of market:**

At this stage the target markets of the ACIA Program (based on the Attendance Care Industry Management System Standards Program, ACIMMS 2008) is relatively small. Only Nursing Agencies tendering to the Lifetime Care and Support Authority are required to sign up to the program and become endorsed. However the ACIMSS Standard may in the future be adopted by other funding providers, and apply to mental health, disability support, aged care fields, which would create a much more significant market.

**Comments on the exclusive dealing notification:**

We do not see any merits or public benefits to have a single provider under the ACIA Endorsement. This arrangement is most unusual.

In Australia and New Zealand, a joint Aus/NZ Treaty Organisation exists to manage and administer Certification Bodies (and other). This organisation is called the Joint Accreditation System of Australia and New Zealand ([www.jas-anz.org](http://www.jas-anz.org)).

The ACIMMS Standard is recognized by JASANZ (like hundreds of other standards), and any of the current 80 JASANZ Accredited Certification Bodies (including Global-Mark) could seek JASANZ Accreditation to this Standard.

The current single provider (Health Audit NZ) is JASANZ Accredited for this Standard. See the following link:

[http://www.jas-anz.org/index.php?option=com\\_content&task=blogcategory&id=44&Itemid=1](http://www.jas-anz.org/index.php?option=com_content&task=blogcategory&id=44&Itemid=1)

Our organisation has applied for JASANZ Accreditation, which is underway.

**Normal arrangements:**

Under JASANZ, there is no need for a further "endorsement". Accredited Certification Bodies would issue a JASANZ Accredited Certificate of Approval to the applicant. This Certificate can be presented and accepted by any funding providers. There may be a royalty payment to the owners of the Standard for use of their intellectual property, but the further endorsement of ACIA (effectively above JASANZ) is most unusual.

We cannot understand the basis nor agree with the exclusive appointment of Health Audit NZ:

- In their letter to GM of the 5/5/2010, the ACIA explains that their intent was to have "limited number of endorsements".
- Health Audit NZ is a New Zealand based organisation. We believe their audit resources may have to fly from NZ, hence adding significant costs to the delivery of the program.
- Organisations such as GM have equivalent or superior credentials and recognitions to Health Audit NZ, and have been given no specific reasons why our ACIA endorsement was rejected (again the ACIA letter of the 5/5/2010 mentions that the ACIA has "limited resources" to undertaken endorsements).

### Third Line Forcing

We believe the issue is one Third Line Forcing.

- ACIA requires that in order to be endorsed under their Program, an independent Third Party (Health Audit NZ) be contracted.
- There are no sound reasons why Health Audit NZ would be the exclusive appointed organisation (other than the lack ACIA resources, as per their letter of the 5/5/2010)
- All Nursing Agencies seeking endorsement under the ACIA program, have to sign up and pay fees to an independent third party (Health Audit NZ)
- The situation is further complicated with the recent Lifetime Care and Support Agency (a NSW Government entity) requiring in their tender documents (reference RFT AC2010, clause 1.4) that organisations submitting tenders be enrolled in the ACIA endorsed program (including having signed up, and paid application fee with Health Audit NZ, based on the ACIA information on their web site), and later endorsed.
- Nursing Agencies (of which 4 are our current Clients) are being forced to buy the services of a third party provider to be ACIA Endorsed. Each of these Clients has expressed their preference in working with our firm, as an extension of our current audit and certification programs.

Please do not hesitate to contact me should you have any questions.

Yours Truly,  
Herve Michoux



Managing Director  
[Herve.Michoux@Global-Mark.com.au](mailto:Herve.Michoux@Global-Mark.com.au)

### Enclosed:

GM Letter to the ACCC dated 21/10/2010 with support documents.

8th November 2010

Mr David Bowen  
Executive Director  
Lifetime Care and Support Authority  
Level 24, 580 George Street  
Sydney NSW 2000

Dear Mr Bowen,

**Re: Lifetime Care and Support Tender – RFT No: AC 2010**

We write on behalf of The Association of Private Nursing Services (APNS) in relation to Lifetime Care and Support Tender RFT No: AC 2010 and our concerns as to the mandatory criteria in section 2.1 – Quality Assurance, which we believe may prohibit or pose significant risk to our member organisation's ability to offer service to the Authority through this tender process.

The APNS is a national peak body for private nursing and community care organisations. The Association represents the interests of 50 member organisations across Australia. Whilst this is a small membership group, the organisations who belong to the APNS make up the majority of providers to the private community care sector, servicing thousands of clients across a multitude of programs. Many APNS members have been providers to the LTCSA authority previously and have a strong desire to maintain this relationship.

The APNS membership comprises owners and/or operators of private nursing and community care organisations. As a group we provide community nursing and care services to the frail aged, people with disabilities and other groups who require community nursing or care services. The core business of our member organisations is to provide community nursing service, attendant care services, disability services, community and aged care packages. Our member organisations have extensive depth and breadth of experience across the sector. APNS members access funding from a number of government and non government organisations such as Department of Veterans' Affairs, Lifetime Care and Support Authority, Workcover, Dust Diseases Board, Transport Accident Commission (VIC), Disability SA, Insurance Commission of Western Australia, Insurance Commission of South Australia, State Health Departments, Department of Ageing and Disability and The Department of Health and Ageing.

The following issues have been raised by our membership in relation to the Mandatory Selection Criteria (Section 2.1) surrounding ACIA Endorsed ACMISS Certification. We bring these to your attention in relation to the open tender and impact it has on potential applicants and the potential outcome for both LTCSA and the Clients you represent.

**1. Cost of Certification**

Cost implications for certification have been identified as a barrier to entry into this certification program. Members have stated that the cost of the audit is above market rate and not reflected in value. Many APNS member organisations already have national/international external (third party) accreditation. We are also concerned that the appointment of a sole auditing agency by ACIA has reduced the capacity for an organisation to negotiate price and select an auditing firm that will best meet their needs as the purchaser of the services.

**2. Restrictions of Mandating a Singular Certification Standard**

We also note that validation of other recognised industry accreditation programs has not been noted in this tender.

Given, the infancy of the ACIA Endorsed ACMISS and the lack of external validation of this program this is a major concern to us and our members.

The APNS has always strongly promoted accreditation amongst its membership and has a strong commitment to best practice in the industry. We have, however, always maintained that organisations deserve the right to choose one of the nationally recognised and accepted accreditation standards that best suits their organisations needs.

We believe that mandating any single accreditation standard is restrictive and disadvantageous to the organisations that have achieved and maintained certification with established and comprehensive industry standards such as ISO, QMS or ACHS.

### **3. Risks Associated with an Untested Certification System**

The ACiA endorsed certification to ACIMSS program is very much in its infancy and while the APNS welcomes any endeavour to improve the standards of care across the industry, it is a significant risk to mandate a singular certification system that is yet to be fully tested and trialled across several organisations, in several states and across several client service cohorts.

### **4. Issues Associated with a Single, Overseas Certifying Body**

Another major concern for the APNS and our members is the fact that at present there is only one organisation approved by ACiA to certify organisations to the ACIMSS (Health Audit NZ Ltd). Our members have been given quotes as high as \$20,000 to be certified to these standards, with a cancellation fee of \$3000 if the tender application is unsuccessful and they withdraw from the ACIMSS program.

Not only do we believe these fees to be excessive, it seems unreasonable that there is no competition amongst qualified accreditation organisations which are competent, capable and technically recognised by JASANZ to certify to these sort of standards.

We are aware of at least one such organisation which has had correspondence with LTCSA seeking to be approved as a certifying body only to have their application refused.

This tender by design, is in effect forcing potential respondents to the tender (Australian Companies) to purchase services through a single New Zealand based Company, in order to be eligible to tender for this contract.

This is a most unusual situation and one in which member's have expressed "unfairly restricts their ability to operate their business". This in itself constitutes restriction of trade.

APNS members have advised that they have been dissatisfied with the performance of Health Audit NZ Ltd, appointed by ACiA. This lack of choice of auditing firm appears to be most unusual in an "open" market. Members have reported that the time frames between application and quote have been excessive, communication with the auditing firm has been problematic and that significant gaps in the contractual agreements with the auditing firm have been identified.

### **5. Challenges in finding solutions to these issues with ACiA**

APNS members have lodged their concerns with ACiA regarding several of these issues, and ACiA has appeared to be unresponsive to finding solutions. We believe that this may now directly impact the LTCSA's ability to source a pool of appropriate service providers especially in the rural and remote areas, as many of our members can't see how they can tender for this contract under the current conditions.

The potential exists that a smaller provider pool may be appointed and that brokerage may become the only service delivery model available to meet your client's needs (especially in the rural and remote areas).

The APNS membership is comprised of valued and quality service providers that support and care for families and individuals in the community. Our national scope and breadth represent a unique group of service providers and we are independent of any funding agencies.

There is a sentiment expressed by some of our members that the tender may be seen as more attractive to certain organisations who can afford the additional (and significant certification fees), or are already accredited by this process.

We certainly hope that this is not the case and that the LTCSA is committed to sourcing quality providers across the breadth of geographic areas that are capable of meeting your client's needs.

We are aware of the strong relationship between LTCSA and ACiA and the involvement LTCSA has had with developing the ACIMSS, and as previously mentioned APNS is supportive of endorsed, established quality standards that enhance the level of support offered to all community care recipients.

### **Where to from here?**

It is our belief however that the ACIMSS should be "**one of**" the accreditation standards organisations can choose to show they are operating at a standard acceptable for the LTCSA, and that this be reflected in an amended tender document.

We would also be keen to see additional "Australian Based" organisations be approved as accreditation bodies to the ACIMSS.

With these examples in mind, we wish to convene an **urgent meeting** with you to determine means by which these serious issues of concern may be addressed within the tender.

We request that until these important issues can be addressed that the tender submission date be delayed to ensure that potential respondents who currently view the process as prohibitive are afforded the opportunity to respond in a fair and equitable manner.

We have escalated this matter by contacting you personally with the explicit intention of highlighting the matters outlined above and working together towards a suitable outcome for all stakeholders without the need for any third party involvement, and we are very committed to achieving that goal.

In conclusion, please be assured that the APNS is committed to quality improvement and third party external review as evidenced in our culture and philosophy. We acknowledge that there is value in industry specific standards and third party accreditation. The purpose of this letter is to bring to your attention some of the unique challenges posed by section 2.1 of the tender document.

We look forward to your thoughts on these issues, and given the short time frames, I can be contacted in the first instance on 0401 391 411 or via email [info@apns.org.au](mailto:info@apns.org.au).

Yours sincerely,



Nick McDonald  
President  
Association of Private Nursing Services

21 October 2010

Australian Competition and Consumer Commission  
Attn: Manager, Business Complaints Section  
GPO Box 3648  
Sydney NSW 2001

Re: NSW Government Agency - Lifetime Care and Support Authority (LCSA) tender requirements, with exclusive arrangement with single provider - Reference RFT AC2010

Dear Sir/Madam,

We are writing this letter to express our serious concerns about the requirements presented in the Lifetime Care and Support Authority recent tender (published 19/10/2010) and closing 19/11/2010.

- The tender (reference RFT AC2010, clause 1.4, copy attached) requires that organisations seeking to provide services to the Authority be Enrolled in the ACiA - Attendant Care Industry Association of NSW Inc (ACiA) Certification Program to the Attendant Care Industry Management System Standard (ACIMSS) (see attachment 1 which defines the requirements for Enrolment in the ACiA Program, referred to in the LCSA Tender)
- ACiA have entered into an agreement with a private New Zealand based organisation called Health Audit (NZ) Ltd.
- Our firm is an Accredited Certification Body, and we have also applied to be endorsed by ACiA (see attachment 2 our letter to ACiA dated 19/04/2010).
- We are accredited by JASANZ (Joint Accreditation System of Australia and New Zealand, a Government appointed treaty organisation between Australia and New Zealand to administer certification and inspection bodies). The ACIMSS Standard is a standard recognised by JASANZ. Health Audit (NZ) Ltd is accredited by JASANZ for this standard.
- ACiA have rejected our application to become an Endorsed Body (see attachment 3, Letter from ACiA dated 05/05/2010).
- We have subsequently written to the LCSA. The LCSA require ACIMSS Certification. We enquired if the Authority would accept the Global-Mark JASANZ Accredited Certificates (see attachment 4, our letter to LCSA dated 10/09/2010).
- LCSA replied on the 8/10/2010 that the Authority would maintain the requirement for ACiA endorsement and that Global-Mark should work with ACiA (see attachment 5, letter from LCSA dated 8/10/2010). We believe that LCSA were involved in the development of the ACIMSS Standards.
- A number of our Clients or potential Clients are preparing their responses to the LCSA Tender. They have corresponded with Health Audit (NZ) the fees for ACIMSS Certification: the fees quoted were very high, about 50% higher than if we were to deliver the program locally. Under the present RFT requirements, organisations have to pay \$500 and sign a contract with the third party to have the right to tender.
- Finally the ACIMSS standard as a document can be procured from ACiA, and we believe we have the competences and credentials to deliver Certification / Endorsement.

As you can see ACiA has created a monopoly provider and the LCSA Tender requirement further consolidates this monopoly. Client seeking to tender have to commit and sign a contract with a private company (application fee is \$500 but also completed the Application Fee and agreed on the Conditions)

Our Clients are concerned that complaining to the LCSA or ACiA could be detrimental to their chances of being endorsed (by ACiA) or meeting the LCSA tender requirement.

Please note that one of our Clients has already contact the ACCC (reference number 1010909), but did not provide their company details at this stage.

**Summary**

- We believe the requirement for certification and relationship between LCSA/ACiA and Health Audit (NZ) is not consistent with Part 4 of the Trade Practices Act
- The current tender requirement, effectively requires organisations to apply for services and pay an application fee to the third party, and
- From our perspective we are being locked out of a potential market. Our Clients are forced to use a single provider, pay very high prices for a service which we could offer.

Please feel free to call me should you have any questions, and we look forward to hearing from you.

Yours Truly,

**Herve Michoux**  
**Managing Director**  
**[Herve.Michoux@Global-Mark.com.au](mailto:Herve.Michoux@Global-Mark.com.au)**  
**Tel: 0433 244 018**

**Enclosed:** Attachments listed in the letter

D10/62467

8 October 2010

Herve Michoux  
Managing Director  
Global-Mark  
Suite 4.07  
Delhi Road  
North Ryde NSW 2113

Dear Mr Michoux

**Letter requesting ACIMSS approved certification status**

The Lifetime Care and Support Authority (the Authority) has given considerable thought to the basis for establishing an accreditation system for the provision of attendant care.

In accordance with accepted co-regulatory principles the Authority has worked with the Attendant Care Industry Association in framing the appropriate accreditation standards. It is the strong preference of the Authority that the industry develops and/or endorses standards to ensure relevance to the industry as well as broad acceptance.

The Authority is satisfied that the ACIMSS certification program will ensure that the quality of service provision to Scheme participants adheres to the standards set by the Industry.

In preparing Global-Mark to provide certification to the ACIMSS Standards you should raise this with the Attendant Care Industry Association rather than the Authority.

Yours sincerely



David Bowen  
Executive Director



10<sup>th</sup> September 2010

Lifetime Care and Support Authority  
Level 24, 580 George Street,  
Sydney 2000

**Re: Concerns about the delivery of Attendant Care Industry Management System Standards Certification, and requirements of the Attendant Care Industry Association of NSW Inc (ACiA)**

Dear Sir/Madam

We are writing to you to express our concerns about the current process of Accreditation promoted by the Attendant Care Industry Association of NSW Inc (ACiA), which we understand is now a requirement to become an approved provider to the LCSA.

At present ACiA, has "approved" only one Certification Body. We have made representation to also received "approved" status, but this has not been accepted (letter from ACiA dated 5/5/2010).

As a consequence a "monopoly" provider has been created, and a number of our Clients are being forced to use this provider.

These Clients would prefer to extend their Accreditation/Certification relationship with our firm, as we are currently providing such services to them, just to another standard.

Our organisation is accredited by the Joint Accreditation System of Australia and New-Zealand ([www.JAS-ANZ.org](http://www.JAS-ANZ.org)) and we have applied to be accredited to deliver the ACIMSS Standards.

We would like to confirm that you would accept JASANZ Accredited Certificates to the ACIMSS Standards issued by Global-Mark.

We look forward to your feedback.

Yours Truly,  
Herve Michoux

**Managing Director**  
[Herve.Michoux@Global-Mark.com.au](mailto:Herve.Michoux@Global-Mark.com.au)

## **What Does 'Being Enrolled in the ACiA Certification to ACIMSS Program' Mean?**

To be 'enrolled' in the Attendant Care Industry Association of NSW Inc (ACiA) Endorsed Certification to the Attendant Care Industry Management System Standard (ACIMSS), an organisation must have:

- Completed the Application Form for ACiA Endorsed Certification to ACIMSS including agreeing to the conditions outlined in the application form
- Agreed to the scope of audit with ACiA's Endorsed Certifying Body
- Made provisional audit dates for the Stage II (full) Certification audit within 18 months of the application date\*
- Accepted the proposal for audit services from ACiA's Endorsed Certifying Body
- Paid the ACiA Application Fee (Once the agreement with the Endorsed Certifying Body is signed, ACiA will be informed and ACiA will send you a letter confirming your enrolment in the program and providing you with an invoice for the Application Fee)

\* Note: The application lapses, and an organisation is no longer enrolled in the ACiA Certification to ACIMSS Program, if Certification has not been achieved within 18 months of the application date. An organisation will then need to apply again to reenroll in the Program.

ACiA  
12 July 2010



Attendant Care Industry Association of NSW Inc (ACiA)

ABN: 87 823 684 151

PO Box A2435

Sydney South NSW 1235

Tel (02) 9264 7197

Fax (02) 9261 0389

[contact@aciansw.org.au](mailto:contact@aciansw.org.au)

[www.aciansw.org.au](http://www.aciansw.org.au)

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5 May 2010

Mr Herve Michoux  
Managing Director  
Global Mark  
Suite 4.07  
32 Delhi Road  
North Ryde NSW 2113

Dear Herve

**Enquiry Regarding Becoming an ACiA Endorsed Certifying Body**

Thank you for your enquiry regarding becoming an ACiA Endorsed Certifying Body for the Attendant Care Management System Standard.

We appreciate your interest in our program and Standard. However, at this stage we are not endorsing any new certifying bodies. This is for a number of reasons including the fact that our current Endorsed Certifying Body is providing an excellent service, the current demand for Certification is relatively low and is being adequately met, the whole program is new and we are continuing to monitor the effectiveness of the endorsement processes we have implemented. In addition, you will have noted from our website that the endorsement program is rigorous and resource intensive from ACiA's perspective. As a small organisation we can only manage a limited number of endorsement related activities at any one time.

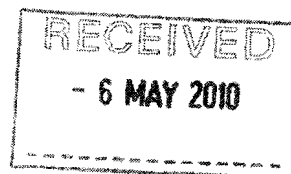
However, we are continuing to monitor demand and we do anticipate it will grow substantially in the future. We will therefore keep your details in our records and approach you when we believe we will be ready to expand our pool of Endorsed Certifying Bodies.

In addition, we do plan to work with JAS-ANZ to develop a specific procedure related to our Standard. We believe that it will be similar to Queensland's Procedure 28 but will also incorporate some of our learnings from our current endorsement processes.

In the meanwhile, if you have any queries, please do not hesitate to contact me.

Yours sincerely

Jenny Barron  
ACiA Executive Director





**global-mark**

19<sup>th</sup> April 2010

**Attendant Care Industry Association of NSW Inc  
Attn: Jenny Barron  
PO Box A2435  
Sydney South NSW 1235**

**Re: Certification or Accreditation to Attendant Care Industry Management System Standard**

Dear Jenny,

Our organisation wishes to apply to become an Endorsed Certification Body under the ACiA scheme.

A number of Clients have brought the program to our attention and are keen to participate, and from a Global-Mark perspective we are keen to continue to work with them.

Our company is Sydney based, we are accredited by JASANZ (for a number of programs) and ISQUA (for our Health activities). We are also involvement with the National, QLD, and recently Victorian Disability Programs.

We work with around 1200 Clients around Australia, have around 50 Client Managers (auditors in the field delivering our conformity assessment services) and have a management team of 12 staff and support staff in Sydney.

Please let us know if there are any specific requirements, or process to follow.

We would be pleased to meet with you, understand your plans and strategies so we can take an active and supportive role in the development and implementation of your Standards.

We enclose:

- Introduction to our company
- JASANZ Accreditation Schedule
- Typical Schedule of fees

We look forward to hearing from you.

Yours Truly,  
Herve Michoux

**Managing Director  
[Herve.Michoux@Global-Mark.com.au](mailto:Herve.Michoux@Global-Mark.com.au)**