



**Australian  
Competition &  
Consumer  
Commission**

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**27** April 2012

Mr Paul Donovan  
MDS Legal

By email: [pdonovan@mdslegal.com.au](mailto:pdonovan@mdslegal.com.au)

Dear Mr Donovan

**Real Estate Institute of Western Australia (Inc) application for authorisation A91280  
- determination**

I refer to your submission dated 29 March 2012 and your correspondence dated 23 April 2012 regarding the determination issued by the Australian Competition and Consumer Commission (ACCC) on 19 April 2012 authorising the Real Estate Institute of Western Australia Inc's (REIWA) membership framework (Determination).

**REIWA's submissions regarding its intellectual property and notice under condition C3**

The ACCC had regard to each of REIWA's submissions in reaching its decision to issue the Determination. The ACCC does not oppose your client's proposed measures to manage its intellectual property or implement condition C3 in providing notice on its website as to the availability of its Standard Forms. The ACCC did not consider it was a matter that needed to be dealt with directly in the Determination.

**Paragraph 5.11 of the Determination**

In your correspondence of 23 April 2012 you refer to paragraph 5.11 of the Determination which provides that the substitute authorisation is granted in respect of particular documents (REIWA's Articles, Members' Code, Auction Code, MLS By-Laws and 14 Standard Exclusive Agency Forms) as they stand at the time of authorisation. Any changes to these documents during the term of the authorisation would not be covered by the authorisation. I note that paragraph 5.11 was part of the Draft Determination issued on 16 March 2012.

The statutory protection provided by conditional authorisation A91280 extends to the documents considered by the ACCC when it made the Determination. In relation to any

changes that your client may make to its Articles of Association and Standard Exclusive Agency Forms that it considers to be 'housekeeping' amendments, it is a matter for your client as to whether it considers it necessary that it have statutory protection for those changes.

Your proposed method of dealing with any such 'housekeeping' changes as referred to in your letter of 23 April 2012 appears to be reasonable. When advised by you of 'housekeeping' changes, the ACCC does not undertake to conduct an assessment of the amendments. I note that you include a proviso in relation to dealing with changes in the proposed way when REIWA will consider making an application for a minor variation. This includes when the ACCC raises issues of its own in relation to the amendments. As noted, the ACCC will not necessarily conduct an assessment of the changes. However, as you know, the ACCC may, in certain circumstances, review and possibly revoke an authorisation on its own initiative. These circumstances include a material change of circumstances since the authorisation was granted. A material change of circumstances is one that has an impact or likely impact on public benefit/detriment.

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 Imogen Hartcher-O'Brien on (02) 6243 1049.

Yours sincerely



Dr Richard Chadwick  
General Manager  
Adjudication Branch