



## TRADE PRACTICES ACT 1974

Undertaking to the  
**Australian Competition and Consumer Commission**  
given for the purposes of section 87B by  
**Australian Association of Agricultural Consultants (Western Australia) Inc**

### **Background**

1. The Australian Association of Agricultural Consultants (Western Australia) Inc (**the Association**) is an organisation whose members are practising agricultural consultants in Western Australia, including consulting firms and sole practitioners.
2. In or about October 2002, the stated aim of the Association was to provide assistance to the profession and protection to the public, including through:
  - the provision of a professional organisation for the special needs of Association members in practice;
  - the determination and implementation of a Code of Ethics and Code of Professional Conduct for practitioners; and
  - assisting the growth and standing of the profession.

### *Scale of Fees*

3. In or about October 2002, the Association published on its website a 'recommended scale of fees' as a 'guide for members and the public'. The scale of fees was described as 'a guide to assist the Agricultural Consultants and their clients to agree on the fees to be charged for professional services'.

### *Code of Ethics*

4. Until about October 2002 the Association's Code of Ethics contained a number of 'rules'. 'Regulation A' of the Association's Code of Ethics stated that the 'Rules of the Association shall be binding on all members'. The consequences for non-compliance with the rules were set out in 'Regulation D' of the Code of Ethics. These consequences included reprimands, apologies, fines of \$1,000 or more and disqualification.
5. Rule 14 of the Code of Ethics stated that:

[a] member, acting as a consultant, shall not hold himself out or allow himself to be held out directly or indirectly as being willing to perform services for a fee less than that fixed from time to time by the Australian Association of Agricultural Consultants (W.A.) Inc.

### *Annual General Meetings*

6. In response to the Commission's inquiries, the Association provided copies of the minutes of its Annual General Meetings from 1989 – 2002. The minutes provided

record the presentation and acceptance of a recommended scale of fees on 24 November 1989.

7. The minutes provided also record motions carried to adjust the fee scale upwards on 29 November 1991, 25 November 1994, 24 November 1995, 12 September 1997, 8 September 2000 and 20 November 2001.

#### *Commission investigation*

8. Following an investigation in 2003, the Australian Competition and Consumer Commission (**the Commission**) has reached the view that in the period from about November 1989 until 2002, a number of members of the Association made or attempted to make a contract, arrangement or understanding (**the agreement**) containing a provision which had the purpose or was likely to have the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of professional fees for consulting services supplied by all or any of the parties to the agreement in competition with each other in contravention of section 45 of the *Trade Practices Act 1974* (**the TPA**) through the operation of section 45A.
9. The Commission understands that the Association has never sought to enforce the recommended fee scale and that no member of the Association has ever been penalised in relation to the fee scale.
10. Following correspondence from the Commission in relation to this investigation, the members of the Association agreed to delete Rule 14 of the "Code of Conduct" and the recommended Scale of Fees.
11. The Association has also commenced a review of its Constitution, Code of Conduct and Code of Ethics, and has engaged a legal advisor to assist in this review.

#### **Admissions by the Association**

12. The Association admits that its conduct, through the conduct of its members, in agreeing to and publishing a scale of fees and seeking to prevent members from charging for consulting services at rates less than those published in the scale of fees, contravened the price fixing provisions of the TPA.
13. Specifically, the Association admits that by making the agreement referred to at paragraph 3, the members of the Association made a contract, arrangement or understanding containing a provision which, by virtue of section 45A(1), had the purpose or would have had or been likely to have had the effect of substantially lessening competition in a market contrary to section 45(2)(a) of the TPA.
14. The Association states that it has now ceased the conduct.

#### **Undertakings by the Association**

15. The Association hereby undertakes for the purposes of section 87B of the TPA that it will not, by itself, its servants or agents or otherwise howsoever, in trade or commerce, in connection with the supply or possible supply of agricultural consultancy services, create or give effect to any agreement as to price such as

that described in paragraph 3, or to refer to such agreements in its Constitution, Code of Ethics or Code of Conduct.

16. The Association further undertakes, within one month of the commencement of this undertaking, to write to all of its members, advising them that:
  - the Commission has investigated the Association and the conduct of its members in relation to the recommended fee scale; and
  - it has admitted that its conduct may have contravened section 45 of the TPA and that the Association has given the Commission a court enforceable undertaking not to engage in similar conduct in the future.
17. The Association further undertakes, within three months of the commencement of this undertaking, to provide training to the Association's office bearers and members to raise awareness of trade practices issues using the services of a qualified consultant. The identity of the consultant, the content of the training and the arrangements for the provision of the training will be agreed with the Commission.
18. The Association further undertakes, within three months of the commencement of this undertaking:
  - to conclude the review of the Association's Constitution, Code of Ethics and Code of Conduct;
  - to provide to the Commission a report on the revised instruments and their compliance with the TPA, prepared by the legal advisor who has conducted the review; and
  - to provide to the Commission a copy of the revised instruments.
19. Finally, the Association further undertakes, within one month of the completion of the report described at paragraph 18, to:
  - advise its members of the finalisation of the review of the Association's Constitution, Code of Ethics and Code of Conduct;
  - draw members' attention to the amendments to those instruments; and
  - provide members with copies of the revised instruments.

#### **Commencement of the undertaking**

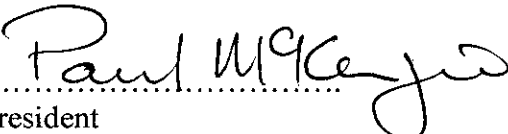
20. This undertaking by the Association comes into effect when:
  - the Association executes this undertaking; and
  - the Commission accepts the executed undertaking.


#### **Acknowledgements by the Association**

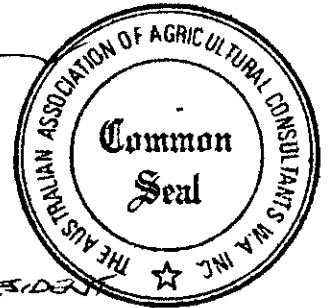
21. The Association acknowledges that the Commission will make this undertaking available for public inspection.

22. The Association further acknowledges that the Commission will from time to time publicly refer to this undertaking.
23. The Association further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

IN WITNESS of these undertakings and its agreement the common seal of the Association of Agricultural Consultants (WA) Inc was affixed by authority of the Board of Directors in the presence of:

  
.....  
President

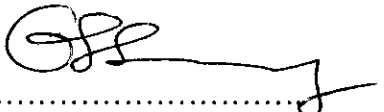
  
.....  
Secretary



This 30 day of JULY 2004

  
VICE PRESIDENT

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974

  
.....  
Graeme Julian Samuel  
Chairman

This 13<sup>r</sup> day of September 2004