

# AUSTRALIAN COMPETITION TRIBUNAL

## PRACTICE DIRECTION No 3

### Confidential Information

1. This practice direction applies to any party (whether an applicant or otherwise) who wishes to file a document with the Tribunal in relation to an application under Subdivision C of Division 3 of Part VII of the *Trade Practices Act 1974* (Cth) (“the Act”) as amended, in respect of which document, or a part thereof, it claims confidentiality.
2. A party requesting that all or any part of a document should be kept confidential should have regard to reg 24 of the Trade Practices Regulations 1974 (“the Regulations”).
3. When a party files a hard copy of a document in relation to which confidentiality is requested either in whole or in part, the document must be filed in a plain white envelope endorsed “Confidential Restriction on Publication Claimed”.
4. When a party files an electronic copy of a document in relation to which confidentiality is requested either in whole or in part, the reference to the document in the electronic copy must be endorsed with the words “Confidential Restriction on Publication Claimed”.
5. A party making a request for confidentiality in respect of all or any part of a document must file a document setting out the request and submissions in support of it with the Registry of the Tribunal at the same time as the document is filed with the Registry.
6. Subject to paragraph 8 below, a document that is subject, in whole or in part, to a request for confidentiality will be treated as confidential and will not be disclosed to any party (other than the Australian Competition and Consumer Commission

("the Commission") unless the Tribunal is specifically requested not to do so) before that request is determined.

7. A party who requests that part of a document should be kept confidential shall, at the time of the filing of the request, the document and the submissions in support, file:
  - (a) an unmarked copy of the document including the parts in respect of which confidentiality is claimed;
  - (b) a copy of the document, marked up so as to show clearly the parts in respect of which confidentiality is claimed;
  - (c) a copy of the document, with the parts in respect of which confidentiality is claimed masked so that these parts are not disclosed.
8. If a request for confidentiality is received, the Tribunal will provide the Commission with a copy of the confidentiality request, a copy of the document referred to in paragraph 7(c), the supporting submissions and a copy of the document referred to in the request in paragraph 7(b) (unless the Tribunal is specifically requested not to provide the Commission with a copy of that document in which case reasons for such request must be given). The Commission must file and serve (electronically if it wishes) on the party claiming confidentiality any submissions in relation to the request for confidentiality no later than 5.00pm on the next business day after the request is provided to the Commission.
9. Unless otherwise ordered, a request for confidentiality will be determined on the basis of the written submission provided by the party filing the document and any submission received from the Commission. The Tribunal will determine each request for confidentiality as soon as practicable after the request is received by the Tribunal.
10. The Tribunal will inform the applicant and the Commission of the determination of a confidentiality request as soon as practicable after such a determination is made.

11. If the Tribunal makes a determination refusing a confidentiality request in relation to a document or any part of a document, the party making the request may withdraw that document or that part of the document and require the Tribunal to return it to that party. Unless that party notifies the Tribunal within one business day after the Tribunal informs the party of such determination that it withdraws such request for confidentiality, the Tribunal will treat the document or that part of the document as withdrawn and return it to that party.
  
12. The Commission may recommend to the Tribunal that any information it provides to the Tribunal, including information contained in the report it provides to the Tribunal under s 95AZE, be kept confidential. The Tribunal will determine whether to treat this information as confidential.

  
ALAN H GOLDBERG  
President

5 January 2007