

Australian Capital Territory

Independent Competition and Regulatory Commission (Disclosure Guidelines) Determination 2005 (No 1)*

Disallowable instrument DI2005–191

made under the

**Independent Competition and Regulatory Commission Act 1997, section 46
(Confidential information – general disclosure)**

1 Name of instrument

This instrument is the *Independent Competition and Regulatory Commission (Disclosure Guidelines) Determination 2005 (No 1)*.

2 Commencement

This instrument commences on the day after notification.

3 Determination of disclosure guidelines

The Independent Competition and Regulatory Commission has determined the disclosure guidelines in Attachment 1 to this instrument for the purposes of section 46(1)(a) of the *Independent Competition and Regulatory Commission Act 1997 (ACT)* under section 46(4) of that Act.

Paul Baxter
Senior Commissioner
for the Independent Competition and Regulatory Commission
19 August 2005

*Name amended under Legislation Act, s 60

Attachment 1 Disclosure Guidelines

1 Definitions

In these guidelines:

Commission means the Independent Competition and Regulatory Commission;

Confidential information has the meaning given in the *Independent Competition and Regulatory Commission Act 1997* (ACT).

2 Application to confidential information

These guidelines apply to disclosure of confidential information by the Commission under section 46 of the *Independent Competition and Regulatory Commission Act 1997* (ACT).

3 Tests for disclosure

For the purpose of section 46(1)(a) of the *Independent Competition and Regulatory Commission Act 1997* (ACT), the Commission will take the following considerations into account when determining whether or not to disclose confidential information –

- (a) whether the information over which confidentiality is claimed is identified specifically, rather than in generic or global terms;

Example: A particular clause of a contract may satisfy the requirement, whereas the contract as a whole may not.

- (b) whether the information is subject to any requirement under law in relation to use, confidentiality or disclosure of information.

Example:

- Personal information that is subject to the *Privacy Act 1988* (Cth)
- Information (such as a trade secret) that has commercial value to a business or its competitors that would, or could reasonably be, diminished or destroyed if disclosed.

Note: An example is part of this instrument, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001* (ACT) ss 126, 132)

4 Detriment caused by disclosure

- (1) The onus is on the supplier of the information, and/or the person who provided the information to that supplier, to satisfy the Commission that disclosure of the information would cause significant loss or damage to a person.
- (2) The nature and likely extent of the detriment that will arise from disclosure of the information must be clearly demonstrated.

5 Public benefit in disclosure

- (1) Subject to the tests for disclosure in section (3) of this instrument, where –
 - (a) there is a discernible public benefit that will result from disclosing the confidential information; and
 - (b) the Commission considers that the public benefit outweighs the detriment that disclosure would cause to any person,the Commission will disclose the information.
- (2) The Commission will assess the public benefit in disclosure of confidential information on a case-by-case basis.
- (3) When assessing the public benefit in disclosure of confidential information, the Commission will have regard to:
 - (a) the nature of the information;
 - (b) the context in which the information is to be disclosed; and
 - (c) the applicable law.

6 Guidelines not to be taken to limit existing rights under law

It is the responsibility of the owner of information to seek legal advice as appropriate before providing information to the Commission. These disclosure guidelines do not purport to limit or otherwise infringe any existing right(s) under law that a person may have in relation to information required by, or provided voluntarily to, the Commission.