

IP Australia
08 JAN 2007
P&S



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2006/1421
Your Ref: TM 211
Contact officer: Cameron Martin
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4 January 2007

The Registrar of Trade Marks
IP Australia
PO Box 200
WODEN ACT 2606

Dear Registrar

Certification Trade Mark Application No.1100866

The Australian Competition and Consumer Commission (the ACCC), in accordance with the provisions of the *Trade Marks Act 1995*, has completed its final assessment of Certification Trade Mark (CTM) No. 1100866.

A certificate detailing the ACCC's assessment is attached, as well as a certified copy of the rules. The applicant has been notified.

If you have any queries on this matter, please contact Cameron Martin on (02) 6243 1107.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', written over a large, faint oval shape.

Scott Gregson
General Manager
Adjudication Branch





**Final Assessment of Certification Trade Mark Application 1100866 lodged by
David John Diprose**

The Australian Competition and Consumer Commission (the ACCC), in accordance with the requirements of the *Trade Marks Act 1995*, has completed its Final Assessment of the above Certification Trade Mark (CTM) application.

The ACCC's Final Assessment is that it is satisfied that:

- (a) the approved certifiers are competent to certify the services in respect of which the CTM is to be registered;
- (b) the rules governing the use of the CTM would not be to the detriment of the public;
and
- (c) the rules governing the use of the CTM are satisfactory having regard to the principles relating to restrictive trade practices set out in Part IV of the *Trade Practices Act 1974* (the Act); the principles relating to unconscionable conduct set out in Part IVA of the Act; and the principles relating to unfair practices, product safety and product information set out in Part V of the Act.

Signed.....  (Commissioner)

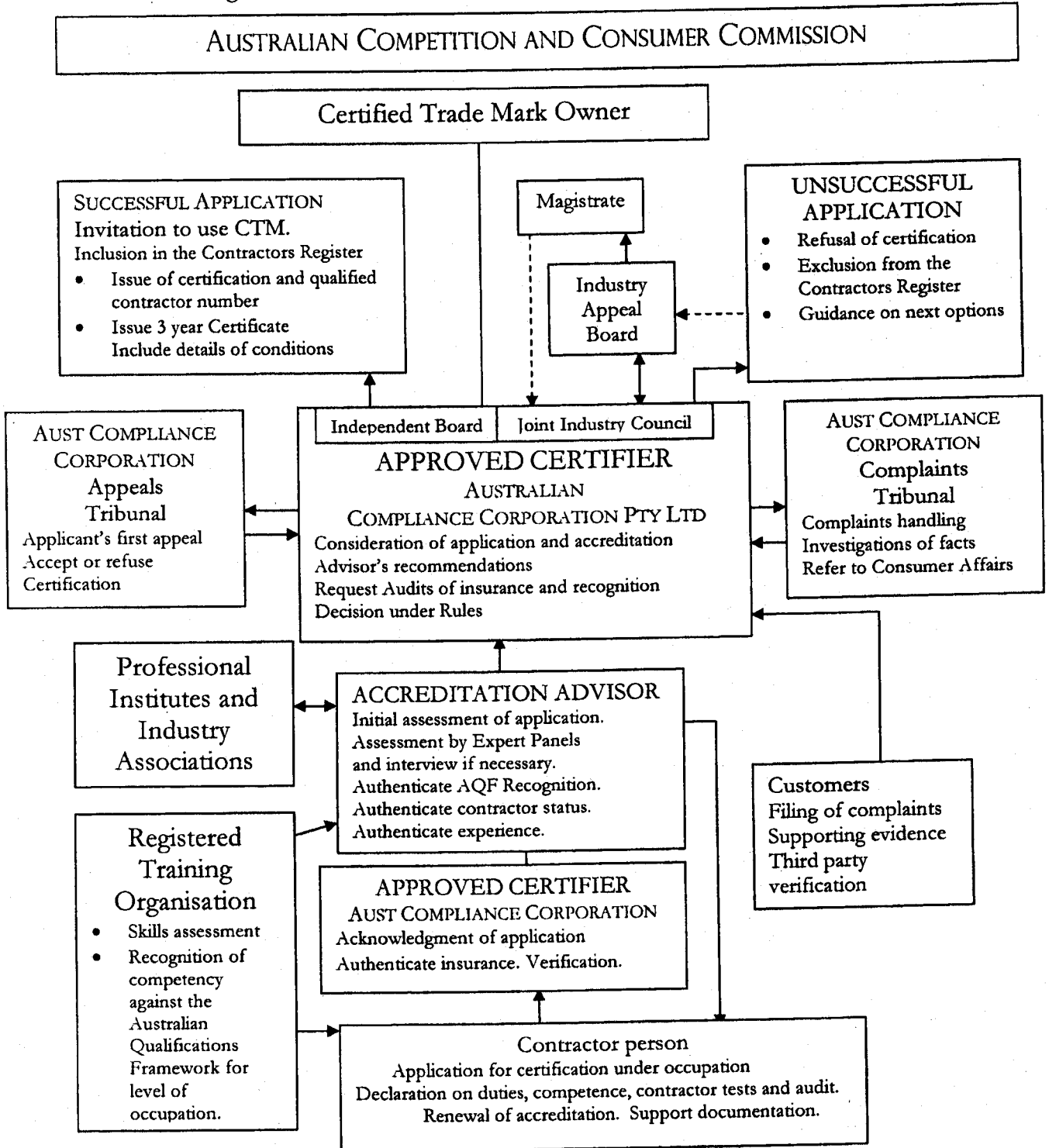
Date..... 22 DECEMBER 2006.....

Certified copy
pursuant to section 175(2)(b)
of the Trade Marks Act 1995

QUALIFIED CONTRACTOR
Application for
Certification Trade Mark

[Signature] 22-12-06
Commissioner Date

Integrated Model for Accreditation of Qualified Contractors



DRAFT

Trade Mark application No 1100866 in the name of David John Diprose



QUALIFIED
CONTRACTOR

DRAFT RULES

1 The persons (approved certifiers) who may be approved for the purpose of certifying the services:

The Australian Compliance Corporation Pty Ltd.

This company seeks to be the Approved Certifier to establish and modify a contractors' registry. The structure is such as to avoid misleading consumers by following Commonwealth guidelines up to the level of Degree qualification.

The Chairman David Diprose is the Foundation Registrar of the Authorised Body under the *Building Act 2000*.

The Tasmanian Contractors Registry Limited is a not for profit Assessment Advisor. It seeks to verify potential CTM users as qualified contractors with their business in the State of Tasmania and provide-
Verification of

Qualification

Experience

Contract

to advise the Approved Certifier.

Where appropriate, similar not for profit assessment advisory bodies may be established in mainland States. The Assessment Advisor shall have a board of five or more members and at least two will be associated with CPISC industries. That is the Construction and Property Industry Skills Council areas of interest.

2 The cases in which services are to be certified:

An applicant will conduct work under contract,

The applicant needs to have attained AQF Certificate III or higher qualification in the design, construction or certification of building and associated work.

The applicant will have an occupation which requires a completed formal qualification achieved through study, training or work experience. He will have a trade or greater qualification, within the Australian Qualifications Framework (AQF) with guidelines set down by the Ministerial Council of Education Employment Training and Youth Affairs. The occupation is defined by the National Competency

Standard. Where doubt exists (such as the cross-over case of an information communication and technology ICT tradesman working as a fire protection wall contractor) a mapping tool such as Competency Navigator at www.competencynavigator.com - may be used to match the task to the nationally accredited qualifications.

The applicant will have had at least three years experience since qualification in his occupation.

A contractor is a person whose trade or business is defined by the High Court organisation test and supported by the definition from the Office of Employment Advocate. While considering the total circumstances, a contractor is a person who is

- out on his own
- free to hire others to complete a contract for work
- conducts his occupation under the terms of a contract

The guidelines of the AQF for level III and above - shall determine whether a person is either A (qualified) or B (not yet qualified). Only persons defined as A (qualified) are to be certified. Once qualified, a person remains qualified.

3 Eligibility

The qualification for occupations will be AQF III or higher, including Diploma and Degree depending of the Skills Council guidelines. Occupations conducted by contract include those described by the Construction and Property Services Industry Skill Council on the web site www.cpsisc.com.au and in the Occupations Appendix to these rules.

4 The conditions under which an approved user is allowed to use the certified trade mark in relation to services:

Where a person is qualified as a qualified contractor Certificate III level or greater and has had their qualification verified by an Authorised Training Organisation under the Australian Qualification Framework

The approved certifiers will invite the applicant, on payment of a fee, to apply for a certificate with a three year duration from date of issue. On payment of an annual fee, they may then display the certified trademark as a logo of a size and material as approved by the approved certifiers from time to time - including business cards, stickers, site notices and signs.

5 Qualifications required in order for an applicant to be granted certified user status.

Process for determining compliance with eligibility requirements:

The Certified Trademark user's qualification shall be at an AQF level III or greater in an occupation as defined by the National Skills Packages or the Australian Skills Recognition Information. Proof of qualification will be by photocopy of the qualification recognised by a registered training organisation. Proof of identity will be required.

5a Qualification

The AQF qualification will enable a qualified individual to

- Demonstrate relevant theoretical knowledge
- Apply a range of well developed skills
- Apply known solutions to a variety of predictable problems
- Perform processes that require skills where some discretion and judgement are required
- Interpret available information using discretion and judgement
- Take responsibility for own outputs in work and learning
- Take limited responsibility for the output of others.

5b Experience

Applicant will provide proof of at least three years of experience in their occupation (including supervised experience) from a referee who may be a statutory officer or responsible accredited building practitioner licensed under State law. Proof will require a current working daytime telephone number of the referee and the name and occupation of the referee on an expression of interest application form. The reference may be checked by telephone. The applicant must agree to a reference check.

5c Contractor

Definition of a contractor who meets the organisation test

The High Court has quoted the following statement by Windeyer J in *Marshall v. Whittaker's Building Supply Co*: (1963) 109 CLR 210.

... the distinction between an employee and independent contractor is rooted fundamentally in the difference between a person who serves his employer in his, the employer's business, and a person who carries on a trade or business of his own.

This distinction is referred to as the organisation test.

The applicant shall declare that they are a contractor

They work out on their own

They carry out a trade or business of their own

May freely employ or subcontract others to achieve a result.

Meet the overall definition of a contractor by having an Australian Business Number and provide a copy of a written contract for the work they currently undertake.

A photo static copy of the contract (excluding commercial in confidence figures and the like) shall be provided with the application for use of the CTM.

6 Renewal every three years

Ongoing requirements of a person approved with three year renewal as a contractor:-

The certified applicant may seek a renewal of certification of a service regarding his or her status as a bona fide contractor at the end of every three years of certification.

A service will be certified where the applicant conducts a substantial part of his work by contract, weather permitting, during a normal working month.

A further assessment by the Assessment Advisor regarding continuing competence as a contractor will be conducted. A new referee may be notified and reference checks conducted. Proof will require a current working daytime telephone number of the referee and the name and occupation of the referee on an expression of interest application form. The reference may be checked by telephone. The applicant must agree to a reference check.

7 The use of the certified trade mark by the owner if he intends to use it and any approved user: shall be for any lawful purpose subject to regulations that may be passed by the Board of the Australian Compliance Corporation Pty Ltd within the replaceable Rules of the Corporations Act.

The fees shall be Assessment fee \$220
Three year use of CTM fee \$ \$596

Payment may be made annually at \$198 but must be within 30 days of a written reminder from the Approved Certifier.

Non payment of the annual fee- within 30 days of a person receiving a request will result in the expiry of the certificate for that person. No refund of fees will be made.

8 The settlement of any dispute arising from a refusal to
I certify the services

II allow the use of the certification trade mark.

The applicant is invited to apply for the Certified Trade Mark by the Approved Certifier. Where there is no invitation sent within 60 days of receipt of expression of interest and verification of qualification, experience and contract, the applicant may lodge a complaint.

The Approved Certifier shall appoint a Complaints Committee from the Board of the not for profit Assessment Advisor. This committee will comprise three board members including a responsible member of the building industry. The committee will not include the owner of the Certified Trade Mark.

The committee will make a recommendation to the Approved Certifier for decision.

9 Refusal of Invitation and Decisions of the Approved Certifier

Matters of procedural fairness will be considered regarding all aspects of the Certification. Upon reaching a decision the Approved Certifier will provide written reasons to the parties.

Each applicant party to a decision will receive a written explanation which will include:

- applicant's name
- date of decision
- body, person or committee which made the decision
- summary of the decision
- findings of fact material to the decision
- evidence on which the findings of fact are based
- relevant sections of legislation and the rules
- reasons for the decision and
- detail of any rights to review or appeal.

10 Appeals from refusal to invite Certification and aggrieved applicants

Persons who have been refused an invitation to accreditation or are aggrieved will be able to appeal (on the grounds of procedural error or failure to consider all relevant information) to an Appeals Committee, independent of the Accreditation Advisor that dealt with the application.

The Appeals Committee will include a Chairman, who will be a Bachelor of Laws recognised by the Supreme Court of the State, a representative of the category and class of contractor and an experienced building practitioner of a different category. Appellants may repair their insurance affairs before the Appeals Committee sits. Proof of this will be considered relevant information.

The Appeals Committee will be able to overturn the recommendation of the Accreditation Advisor; ask that the application be reconsidered, with additional information being taken into account; to refer the matter to a different Accreditation Advisor appointed by the Approved Certifier; or to confirm the original decision.

Costs will be born by the applicant.

Rights of Review. The Approved Certifier will not oppose an appeal to a mediator appointed by the Law Society in the appropriate State or Territory at the request and expense of the applicant.

The approved certifier must be notified of the appeal at the same time as the request for a mediator.

Further avenues are available through a magistrate and the courts.

11 Other provisions permitted to be inserted:

The process is one of

- application
- assessment
- invitation
- issue of Certified Trade mark to user
- re -certification

on a three year cycle where all stages are subject to a positive feedback procedure of verification of current competence as a contractor.

General rules of the invitation to use a certified trade mark such as an undertaking that the user of the Certified Trade Mark will act with competence, diligence and integrity may be issued by the Board of the Australian Compliance Corporation Pty Ltd from time to time.

APPENDIX FOLLOWS

APPENDIX

Contractor Occupations

The following occupations represent qualified contractors at AQF III level or above

Architectural Drafter	<u>Word</u> 1.29 mb AQF IV Diploma
Bricklayer	<u>Word</u> 1.35 mb AQF III
Building Surveyor	<u>Word</u> 1.23 mb AQF IV Diploma
Carpenter	<u>Word</u> 1.17 mb AQF III
Cartographic Technician	<u>Word</u> 1.17 mb AQF III
Concreter	<u>Word</u> 1.31 mb AQF III

Dogger Word 1.32 mb AQF III
Excavation Contractor AQF III Certificate in Civil
Construction(Plant)
Floor Finisher Word 1.27 mb AQF III
Geographic Information
Systems Officer Word 1.19 mb AQF III
Geoscience Technician Word 1.17mb AQF IV Diploma
Glass Tradesperson Word 1.38 mb Trade AQF III
Interior Designer Word 1.25 mb AQF IV Diploma
Joiner Word 1.25 mb Trade AQF III
Landscape Architect Word 1.35 mb AQF IV Diploma
Painter & Decorator Word 1.26 mb AQF III
Plasterer Fibrous Word 1.24 mb Trade AQF III
Plasterer Solid Word 1.28 mb AQF III
Plumber Word 1.24 mb Trade AQF III
Rigger Word 1.27 mb AQF III
Scaffolder Word 1.34 mb AQF III
Security Advisor Word 1.16 mb AQF IV Diploma
Security Officer Word 1.15 mb Apprenticeship to AQF III
Signwriter Word 1.23 mb Trade AQF III
Stone Mason Word 1.35 mb Trade AQF III
Survey Assistant Word 1.21 mb AQF III
Surveying Technician Word 1.16 mb AQF IV Diploma
Surveyor Word 1.14 mb AQF VII Degree (not usually styled as a
contractor)
Tiler - Roof Word 1.33 mb AQF III
Tiler - Wall & Floor Word 1.25 mb AQF III

Occupations which do not qualify

Construction Worker Word 1.24 mb Does not qualify Certificate
II
Builders Labourer Certificate II
Floor Sander Certificate II
Plant Operator Word 1.36 mb general exclusion unless
AQF III
Private Investigator Word 1.07 mb Cert IV Police check. Not styled
as a contractor
Security Installer Word 1.14 mb Police licence
Steel Fixer Word 1.36 mb General exclusion unless AQF III

Example

Contract Carpenter

Description Carpenters construct, erect, install, finish and repair wooden and metal structures and fixtures on residential and commercial buildings. They may also work on large concrete, steel and timber structures such as bridges, dams, power stations and civil engineering projects.

Carpenters work on building sites, construction and civil engineering projects, and maintenance in large factories and hospitals. They may work outdoors when erecting the framing for buildings, or indoors when finishing interior fixtures or maintaining existing buildings. They may have to travel between sites.

Joiners are usually employed by firms that specialise in joinery work and work mainly indoors.

- Typical duties**
- construct formwork into which concrete is poured;
 - set out an outline of the building on the ground of the site, using string and pegs to allow for excavations;
 - build floors, wall frameworks (timber or metal), roofs and suspended ceilings, and lay timber floors;
 - read plans and specifications to determine the materials required, dimensions and ➤ installation processes;
 - install metal and timber windows, sashes and doors;
 - construct and erect prefabricated units, such as cottages and houses;
 - cut materials with hand and power tools, and assemble or nail, cut and shape parts;
 - install door handles, locks, hardware, flooring underlay, insulating material and other fixtures;

- maintain and sharpen tools.

Personal

- Requirements**
- enjoy practical work;
 - able to work with your hands;
 - a sense of balance and ability to work at heights;
 - good at mathematics;
 - good health and eyesight;
 - able to work as part of a team.

Qualification ➤ Certificate III in General Construction (Carpentry)

Entry pathway Entry to this occupation is through an apprenticeship which includes on and off-the-job training. This will generally require successful completion of Year 10 or equivalent.
Completion of a pre-apprenticeship course can decrease the length of time of the apprenticeship.

Job prospects Contract Carpenters contract to building and construction companies; and their own businesses.

Employment prospects depend on the level of activity in the building construction industry. This is affected by government policy on interest rates, spending on major projects and the availability of finance to homebuyers. With further training and experience carpenters and joiners can become clerks of works, building forepersons, building construction managers, building inspectors, technical teachers, estimators, building contract administrators or purchasing officers, etc.

Statistically, Carpenters are linked with Joiners and the vacancy level for Carpenters and Joiners is average. Vacancies arising from job changing (Carpenters and Joiners changing employers) are expected to provide 54 per cent of vacancies, compared with 43 per cent from job openings (Carpenters and

Joiners leaving the occupation) and 3 per cent from new jobs (employment growth for Carpenters and Joiners).