

FORM 1

634857

AUSTRALIA

CERTIFIED TRUE COPY

TRADE MARKS ACT 1955

APPLICATION FOR THE REGISTRATION OF A TRADE MARK

[Signature]
28/1/98

1. THE INSTITUTE OF CHARTERED ACCOUNTANTS IN AUSTRALIA a body politic and corporate with perpetual succession and a common seal constituted by Royal Charter of Level 15, Chartered Accountants House, 37 York Street, Sydney the proprietor of the trade mark a representation of which is annexed to this Application hereby applies for registration of the trade mark in Part C of the Register of Trade Marks in respect of "accounting services; auditing services; professional consultation services in this class; financial research, appraisals and analysis; business research, appraisals and analysis; business management assistance; business management consulting; business organisation consulting; commercial management assistance; commercial management consulting; business investigations; advisory services for business management; valuation services in this class; and all other services in this class", being services included in Class No. 35.
2. This application is made pursuant to Section 39 of the Trade Marks Act.
3. The Applicant's address for service is C/- Messrs Phillips Fox, Solicitors, Floor 12, 255 Elizabeth Street, Sydney, New South Wales, 2000.
4. The Applicant furnishes herewith the additional representations required to be furnished by sub-regulation (5) of Regulation 7 of the Trade Marks Regulations.

200

CO 1 4 9 8 3 1 4 JUL 94

Dated this 13th day of July 1994



Phillips Fox
Solicitors for the Applicant
Sydney.

Michael O'Connell
Solicitor

To:
The Registrar of Trade Marks.

ANNEXURE TO FORM 1



TRADE MARKS ACT 1955

APPLICATION FOR THE REGISTRATION OF A TRADE MARK

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2. This application is made pursuant to Section 39 of the Trade Marks Act.
3. The Applicant's address for service is C/- Messrs Phillips Fox, Solicitors, Floor 12, 255 Elizabeth Street, Sydney, New South Wales, 2000.
4. The Applicant furnishes herewith the additional representations required to be furnished by sub-regulation (5) of Regulation 7 of the Trade Marks Regulations.

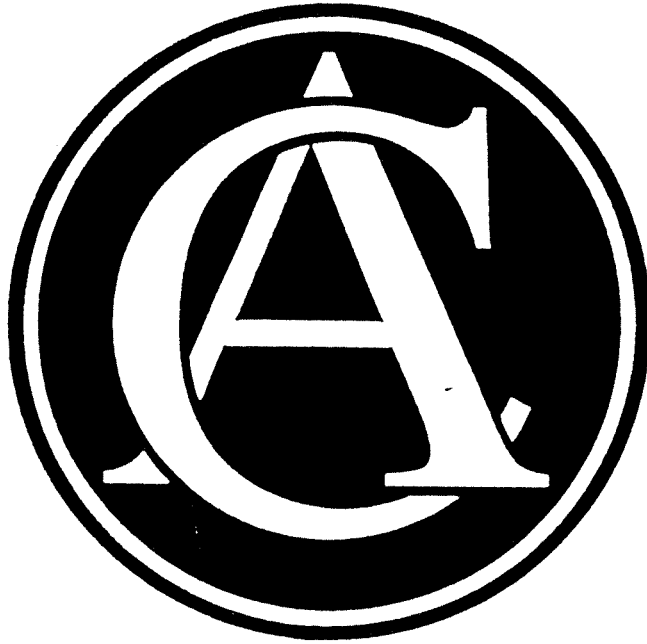
Dated this 13th day of July 1994

Phillips Fox
Solicitors for the Applicant
Sydney.

Michael O'Connor
Solicitor

To:
The Registrar of Trade Marks.

CO 1 4 9 8 3 1 4 JUL 94



FAXED

PHILLIPS FOX
LAWYERS

97 / 11907
CR96: 436

16 September 1997

Mr Gary Hones
Australian Competition and Consumer Commission
PO Box 19
BELCONNEN ACT 2616

BY FACSIMILE: 06 264 3902

Dear Mr Hones

THE INSTITUTE OF CHARTERED ACCOUNTANTS
CERTIFICATION TRADE MARK APPLICATIONS 634857 &
634858 - "CA" Logo (Series) IN CLASSES 35 & 36

We refer to your fax dated 2 June 1997, and apologise for our delay in responding.

We note that you had two queries in relation to our client's Application, namely the appeal procedures under the Institute's draft Rules Governing Use of Certification Trade Mark, and the Institute's compliance with recommendations made by the Trade Practices Commission (as it then was) in its 1992 report: "Study of the Profession of Accountancy". We respond as follows:

1. Appeal Procedures

1.1 We note your concern that the existing mechanism in Rule 7 of the Institute's draft Rules Governing Use of Certification Trade Mark is inappropriate because the Registrar of Trade Marks may not be equipped to deal with such disputes.

1.2 Our client has instructed us to amend Rule 7 as follows:-

"If the Institute refuses to license an applicant to use the Mark the applicant shall be entitled to appeal the decision by submitting it to arbitration by an independent arbitrator agreed between the parties, or failing agreement, an arbitrator nominated by the president for the time being of the Institute of Arbitrators Australia, administered in accordance with and subject to the

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CONSUMER AFFAIRS
22 SEP 1997

Institute of Arbitrators Australia rules for the conduct of commercial arbitration. The award made by such arbitrator will be binding on both parties"

We trust this amendment overcomes the perceived problem.

2. Compliance with the Commission's Recommendations

2.1 We note that your particular issues of concern arising from the Report were:-

2.1.1 the restriction in the Institute's Rules of Ethical Conduct ("REC") on the use of the terms "public accountant" and "accountant" by non-members; and

2.1.2 restrictions on formation of partnerships with non- members.

2.2 We have reviewed the relevant section of the report and the relevant provisions of the Institute's REC. Our client has amended the REC since filing its Application with the Trade Marks Office, and the particular rules which the Commission objected to have now been deleted.

2.3 We enclose a copy of Volume 1 of the latest REC and a copy of Resolutions from the Institute's executive committee regarding the deletion of paragraph 9 of REC1.

3. Formalites - references to 1995 Trade Marks Act

3.1 As you are aware, these applications were lodged under the 1955 Act. Two minor amendments to the Rules need to be made to bring them in line with the different procedures for certification trade marks under the 1995 Act:

3.1.1 In Rule 1.6, we have deleted "in Part C of the Register of Trade Marks" and inserted instead "as certification trade marks";

3.1.2 In Rule 16, we have:

(a) deleted "advertised" and inserted instead "approved by the Australian Competition and Consumer Commission and advertised by the Registrar";

(b) deleted "Section 87 of the Trade Marks Act and either the application has not been opposed or any opposition has been dismissed" and inserted instead "Section 178 of the Trade Marks Act".

3.2 One other oversight in the draft Rules has been rectified: in Rule 5, we have deleted "the date [specify]" and inserted instead "a specified date".

3.3 We trust these amendments are in order.

We enclose a copy of the Rules incorporating the amendments referred to in 1 and 3 above, and look forward to receiving notification that the Commission has certified the Rules under Section 175 of the Trade Marks Act.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Anita Pollard', with a long horizontal flourish extending to the right.

Contact: Anita Pollard
Direct Line: 9286-8385
Partner: Michael O'Connor

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN AUSTRALIA

RULES OF ETHICAL CONDUCT

General

CONTENTS

| | <i>Paragraph(s)</i> |
|--|---------------------|
| Ancillary Objects and Powers..... | 1-2 |
| Use of Description "Chartered Accountant(s)"..... | 3 |
| Eligibility for approval as an Affiliate | 5-8 |
| Public Accounting Entities Other Than "Chartered Accountants"..... | 9 |
| Use of Designations and Descriptions | 10-12 |
| Use of a Member's Name | 13 |
| Use of Business, Corporate, etc, Name | 14-15 |
| Inconsistent and Incompatible Businesses, Occupations or Activities..... | 16-21 |
| Sharing of Profits | 22-25 |
| Remuneration of Members in Public Practice..... | 26-32 |
| Legal Work | 33-34 |
| Members in Outside Employment..... | 35-37 |
| Corporations Undertaking Public Accountancy..... | 38-41 |
| Office Premises | 42-43 |

Use of Description "Chartered Accountant(s)"

3 Subject to the provisions of paragraphs 15 and 38,

Sole Practitioner

- (a) the description "Chartered Accountant" may be used to describe the practice of a member, being a sole practitioner, practising in the member's own name, a firm name, through a company or through a trust;

Two or More Practitioners

- (b) the description "Chartered Accountants" may be used by a practice entity being, unless otherwise approved by National Council
- (i) a partnership in which all the partners are members, U.K. members or affiliates;
 - (ii) a company in which all the directors are members, U.K. members or affiliates, and
 - (A) all the shareholders are such persons or practice entities entitled to use the description "Chartered Accountant(s)"; or
 - (B) where shares in the company are held by persons or entities only for the purpose of the company complying with legal obligations, all such shares are beneficially owned by members, U.K. members or affiliates; or
 - (iii) a trust in which, all the participants and the trustees are members, U.K. members, affiliates or practice entities entitled to use the description "Chartered Accountant(s)".

(Amended 7.95)

4 Deleted (7.91)

Eligibility for Approval as an Affiliate

[Paragraphs 5 to 8 deleted. Refer Regulation 506.]

Public Accounting Entities Other Than "Chartered Accountants"

[Paragraphs 9(a) & (b) deleted]. (7.95)

[Paragraph 9(c) deleted]. (2.95)

Use of Designations and Descriptions

10 (a) Deleted (7.91)

- (b) A member shall not use or permit the use of any designation indicating membership of any other body of accountants together with the designation referred to in Article 16 of the Supplemental Royal Charter except:

- (b) "Certified Practising Accountant" is regarded as a designation of another body of accountants and, as such, shall not be used by a member in conjunction with his Institute designation.

Use of a Member's Name

13 Members must preserve the integrity of the way in which their or their practice entity's name is used, in particular:

- (a) A member or practice entity shall not allow any person practising as a public accountant to use the member's name or to associate the member's name or the name of the member's practice entity in any manner unless that person is a member of the Institute, a member of a body of accountants listed in Appendices 3 or 4 or an entity controlled by such persons.

(Amended 7.92)

- (b) (i) As the reputation of the Institute depends upon the competence, integrity and reputation of its individual members, the above rule applies equally to a member in public practice and to a member who, having retired from his practice, allows it to use his name.
- (ii) It is important, in the interests of both the public and the profession, that a practice carried on either in the name of a member or of a practice entity complies with the high standards of professional expertise and ethical conduct expected of members of the Institute, U.K. members and members of the Society.
- (iii) The constraints on the use of a member's name are designed to protect the interests of the public and the profession by preventing a member from entrusting his name and professional reputation, as endorsed by membership of the Institute, to any person or entity that is not compelled to comply with the REC's.
- (c) It might be helpful in following the application of this rule if one considers, initially, what a member in public practice may do without being in contravention.
- (i) The member may practise, as a sole practitioner or in a practice entity with other members or with persons who are not members or with both, under his own name.
- (ii) The member may sell his practice entity, or his interest in it, to a person who is a member of the Institute or to a practice entity and allow the new proprietor(s) to continue to use his name.

15 **The name and/or description of a practice entity which implies a greater number of practice entity participants than is, in fact, the case, is permissible only when the name(s) of the participant(s) is/are displayed with the name of the practice entity on all stationery of that practice entity.**

(Amended 7.95)

Inconsistent and Incompatible Businesses, Occupations or Activities

16 **A member in public practice shall not concurrently engage in any business, occupation or activity which is inconsistent and incompatible with the provision of professional services to clients.**

17 The simultaneous engagement in another business, occupation or activity unrelated to the provision of professional services to clients which has the effect of not allowing the accountant to properly conduct his practice in accordance with the fundamental ethical principles of the Institute is inconsistent and incompatible with the practice of public accountancy.

18 A business, occupation or activity is inconsistent and incompatible with the provision of professional services to clients when it:

- (a) creates or would create conflict of interest with existing clients;
- (b) impairs or would impair integrity, objectivity or independence in providing professional services to clients;
- (c) impairs or would impair to a material extent the ability to provide professional services to the general public;
- (d) impairs or would impair the good reputation of the profession.

19 This concept owes its origin to one of the powers sought in the petition for the original Charter of 1928, namely that the proposed Institute should have "powers which would prevent the pursuit by members of such other business as shall be deemed by the National Council to be inconsistent with the higher duties devolving on them as Public Accountants".

20 Economic and social conditions are constantly changing and activities which once would have been considered inconsistent with the practice of public accountancy now form part of such practice.

- (b) such arrangement does not limit the member's personal liability in any way other than is permitted within REC2 "The Use of Incorporated Companies and Trusts"
 - (c) the member's practice or practice entity maintains an adequate working capital
 - (d) proper and adequate professional indemnity insurance is carried by the member or the practice entity
 - (e) the practice or the practice entity is conducted in a manner which complies with the proper standards of professional behaviour required of a member.
- 25 It is quite usual for a member in public practice to have agency arrangements with a member or practice entity in another location whereby either party obtains instructions for work and passes it on to the other party to perform. In such cases it is common for the fee or profit to be shared. However, the amount paid to the originating member or practice entity by the performing member or practice entity must, in fact, be only a share of the normal fee on the engagement and such payment must not be regarded as an item of cost and the fee to the client increased to cover it.

Remuneration of Members in Public Practice

- 26 Professional fees rendered to a client should reflect fairly the value of the work performed, taking into account:
- (a) the skill and knowledge required for the type of work;
 - (b) the level of training and experience of the persons necessarily engaged in the work;
 - (c) the degree of responsibility applicable to the work; and
 - (d) the time of all persons engaged on the work.
- 27 Subject to 28(b) and 32, professional fees would normally be determined using appropriate rates per hour or per day for the time of each person engaged on the work. These rates would be based on the premise that the organisation and conduct of the member's office and client work are well planned, controlled and managed. Professional fees must take into account all the factors in paragraph 26.
- 28 (a) Fees for professional services requiring independence and objectivity must reflect fairly the work performed for the client and the other factors in paragraph 26.
- Examples of situations where independence and objectivity are paramount are statutory audit requirements and preparation and presentation of tax returns as a registered tax agent.
- (b) All other services provided to a client may be charged on an agreed fee basis not necessarily related to time, having regard to the remaining factors in paragraph 26.

- (b) A contingency fee arrangement for professional services requiring independence and objectivity must not be entered into.

Legal Work

- 33 Members in public practice who are not legal practitioners shall not carry out work which should be performed by legal practitioners.
- 34 Members in public practice should ensure that they do not contravene these laws as they are interpreted in the several States. If they are in doubt, they should refer their client to his solicitor or, if appropriate, obtain his approval to the member instructing his solicitor.

Members in Outside Employment

- 35 A member who is in the employment for reward of a person (other than a member in public practice) or of a firm or of a company or association (other than a practice entity) providing any services which, in the opinion of the National Council, are ordinarily provided by a member in public practice shall not, on behalf of such person, firm, company or association, provide any such services in his own name.
- 36 Some banks, pastoral and finance companies, trustee companies and solicitors, and possibly others, have departments which conduct accounting services for their clients, such as keeping accounts from which annual statements and income tax returns are prepared. If a member of the Institute is employed by such a company or firm to carry out this work, the above rule requires that it shall be done in the employer's name, so that no such statements or tax returns purport to be the responsibility of a member of the Institute. In the circumstances, the member concerned would not be considered a "public accountant" and thus would be precluded from accepting directly from the client of his employer remuneration for such accountancy services. The above rule prevents him doing indirectly what he is not permitted to do directly.
- 37 A member who is employed by an entity providing public accounting services, none of the principals of which is a member of the Institute, is precluded from undertaking work on their behalf in his own name as a chartered accountant.

Corporations Undertaking Public Accountancy

- 38 A member shall not, without the consent of the National Council, hold an office or financial interest or otherwise have the ability to exercise managerial control in an incorporated company which, in the opinion of the National Council, provides or purports to provide in Australia (except as ancillary to some other business) any services which would, if provided by a member, require that member to hold a Certificate of Public Practice.

- 43 A member in public practice may indicate on his office premises, including office exteriors, any professional description and/or authorised designation, as listed in Appendix 5, provided that the content and overall effect of any sign shall be subject to professional good taste.

Stationery

- 44 A member in public practice must ensure that letterheads and other stationery are of an acceptable professional standard.
- 45 Logotypes — logotypes in the form of designs or emblems (including combinations of the initial letters of a firm name) may be used on the letterheads and other stationery of members in public practice.
- 46 Affiliations — a member in public practice may indicate on his letterhead or other stationery any affiliations or representations with the other firms either in Australia or overseas.
- 47 Business Cards:
Any professional description and/or authorised designation, as listed in Appendix 5, may be included on the business card of a member in public practice and of an employee of a member in public practice.

48 Letterheads:

- (a) A member in public practice may include in letterheads any authorised designation as listed in Appendix 5 and/or any professional description as defined in paragraph 2(o) of REC. Members are encouraged to use the description "Chartered Accountant(s)" with such authorised designations and/or professional descriptions, if entitled to do so.

(b) The letterhead of:

a member in public practice being a sole practitioner describing himself as a "Chartered Accountant";

a practice entity describing itself as "Chartered Accountant(s)"; or

a member or an entity entitled to be described as "Chartered Accountant(s)"

must not, without the written consent of National Council, contain the name of any person who is not a practice entity participant or an associate, a resident manager, senior employee or consultant in terms of (i), (ii), (iii) or (iv) below. Associates, resident managers, employees and consultants must be clearly identified as such.

members and, subject to any qualification contained within particular statements, are mandatory in application.

- (b) APS1 "Conformity with Accounting Standards and UIG Consensus Views", specifies that, in the context of the preparation and presentation of a general purpose financial statement for a reporting entity or where an entity which is not a reporting entity elects to prepare a general purpose financial report, application of the standards set out in Accounting Standards is mandatory, as are the Consensus Views set out in UIG Abstracts.
- (c) APS 1.1 "Conformity with Auditing Standards" establishes the responsibilities of members in relation to compliance with the Australian Auditing Standards. Compliance with the Australian Auditing Standards, which contain basic principles and essential procedures, is mandatory.

(Amended 12.95)

Services Performed Overseas

55 When a member or a member in public practice performs services in a country other than his home country and differences on specific matters exist between the rules of ethical conduct in the two countries, the following provisions shall apply:

- (a) When the ethical requirements in the country in which the services are being performed are less strict than the International Federation of Accountants' ethical requirements, then the ethical requirements of the Federation shall be applied.
- (b) When the ethical requirements in the country in which services are being performed are more strict than the ethical requirements of the Federation, then the ethical requirements in the country in which the services are being performed shall be applied.
- (c) When the ethical requirements as contained within these RECs are more strict than those applicable under (a) or (b) above, then the ethical requirements of these RECs shall be applied.

- 3 Local Government Auditor
- 4 Municipal Auditor
- 5 Registered Company Auditor
- 6 Registered Company Liquidator
- 7 Registered Tax Agent
- 8 Registered Trustee in Bankruptcy
- 9 Registered Migration Agent
- 10 Licensed Business Agent

(Amended 12.95)

10/2/95

Amendment to REC 1

X9937 REC1 - Deletion of Paragraph 9(c) (E13)

It was RESOLVED that the paragraph 9(c) of REC1 which had read as follows be deleted:

Public Accounting Entities other than "Chartered Accountants"

9(c) A member may not practise with a person who is not a member of any body of accountants listed in Appendices 3 and 4 through any entity which, without the prior written consent of the National Council, uses any description which includes the word "Accountants".

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN AUSTRALIA

RULES GOVERNING USE OF CERTIFICATION TRADE MARK

1. In these Rules, except where the context otherwise requires:-
 - 1.1 "By-Laws" means the by-laws of the Institute as appended to the Supplemental Royal Charter dated 17 March 1988, and as amended from time to time.
 - 1.2 "Institute" means The Institute of Chartered Accountants in Australia a body politic and corporate with perpetual succession and a common seal constituted by Royal Charter.
 - 1.3 "Licence" means a licence to use the Mark granted by the Institute in accordance with the Rules.
 - 1.4 "Licensed Services" means the services in respect of which the Mark is registered or in respect of which registration of the Mark has been sought, or such of those services as may have been specified by the Institute, in the case of a particular applicant or Licensee or class of applicants or Licensees, as services in respect of which the applicant or Licensee is or applicants or Licensees are licensed to use the Mark.
 - 1.5 "Licensee" means any person licensed under the Rules to use the Mark.
 - 1.6 "Mark" means the trade mark a representation of which is annexed to these Rules and which is the subject of pending applications by the Institute for registration as certification trade marks.
 - 1.7 "Registrar" means the Registrar of Trade Marks.
 - 1.8 "Regulations" means the regulations made by the Institute pursuant to the Institute's Charter and By-Laws, as amended from time to time, and includes the Rules of Ethical Conduct.
 - 1.9 "Rules" means these rules governing the use of the Mark and includes any further rules made from time to time in accordance with these rules.
 - 1.10 "Rules of Ethical Conduct" means the Rules of Ethical Conduct from time to time prescribed by the Institute and without limiting the generality thereof includes the Rules of Ethical Conduct prescribed by the Institute dealing with:-
 - 1.10.1 Professional Competence;
 - 1.10.2 Continuing Professional Education;

1.10.3 Client Monies and Members' Trust Accounts.

- 1.11 "Standards" means the technical or other standards, specifications and rules regarding the manner of use of the Mark from time to time prescribed by the Institute in accordance with the Rules.
 - 1.12 A reference to a singular number shall be deemed to include a reference to a plural number and vice-versa.
 - 1.13 A reference to one gender shall be deemed to include a reference to the other genders and each of them.
 - 1.14 A reference to a person shall be deemed to include a reference to a body corporate or other legal entity, partnership or other unincorporated association.
 - 1.15 A reference to any statute or statutory provision shall be construed as a reference to that statute or provision as respectively amended or re-enacted from time to time.
2. The Mark is the absolute property of the Institute and shall not be used by any person except under the authority of a Licence issued by the Institute under the Rules.
 3. A person wishing to use the Mark must apply to the Institute for a Licence to do so. A person who has applied for admission to membership of the Institute shall be deemed to have thereby applied for a Licence.
 4. Every applicant for a Licence to use the Mark shall show to the reasonable satisfaction of the Institute that:-
 - 4.1 He is entitled to designate himself in Australia as a Chartered Accountant;
 - 4.2 There is no subsisting breach by him of any of the:
 - 4.2.1 By-Laws, or
 - 4.2.2 Regulations.
 5. If the Institute is satisfied that the applicant complies with the requirements of Rule 4 above, the Institute will grant the applicant a non-exclusive licence to use the Mark in respect of the Licensed Services and in accordance with the Rules, as from a specified date, and will notify the applicant of the grant of the Licence.
 6. If the Institute decides not to grant a Licence to use the Mark, it shall inform the applicant in writing of its decision.

7. If the Institute refuses to license an applicant to use the Mark the applicant shall be entitled to appeal the decision by submitting it to arbitration by an independent arbitrator agreed between the parties, or failing agreement, an arbitrator nominated by the president for the time being of the Institute of Arbitrators Australia, administered in accordance with and subject to the Institute of Arbitrators Australia rules for the conduct of commercial arbitration. The award made by such arbitrator will be binding on both parties.
8. The Institute may from time to time prescribe Standards and alterations to Standards.
9. The Institute shall give notice in writing to all Licensees of any alterations to the Standards, specifying a date from which the alterations shall have effect.
10. The Institute shall supply to each Licensee, copies of all such Standards as are relevant to the Licensee's Licensed Services.
11. Licensees shall in their use of the Mark:-
 - 11.1 Always indicate that the Institute is the proprietor of the Mark, in the manner set out in the Standards or as otherwise prescribed or approved by the Institute from time to time;
 - 11.2 Not represent in any way that they own the Mark or are entitled to use it otherwise than as a licensee of the Institute;
 - 11.3 Only use the Mark as registered and if and as requested by the Institute shall supply the Institute with samples of specified uses or as the case may be proposed uses of the Mark;
 - 11.4 Comply with rules or directives made or issued by the Institute from time to time as to the proper use of the Mark;
 - 11.5 Only provide Licensed Services which conform to the standards required by:-
 - 11.5.1 the By-Laws; and
 - 11.5.2 the Regulations.
12. The Institute shall maintain a register which shall contain:-
 - 12.1 The name and address of each Licensee, and the name under which he practises or the name of the firm in which he practises;
 - 12.2 The date on and from which the Licensee is licensed to use the Mark;
 - 12.3 Such other particulars as the Institute may from time to time

desire to specify.

13. The Institute shall keep at its head office a copy of the Rules and of the Standards, and of any amendments thereto, and such copies shall be open to the inspection of the public during the normal business hours of the head office.
14. A Licensee will immediately cease and desist from using the Mark if:-
 - 14.1 The Institute notifies the Licensee that it has formed the opinion that any services provided by the Licensee under the Mark do not conform to the standards required by the:
 - 14.1.1 By-Laws, or
 - 14.1.2 Regulations;
 - 14.2 The Institute has given the Licensee notice that it has terminated the Licence pursuant to Rule 15 below.
15. The Institute shall be entitled to terminate any Licence if:-
 - 15.1 The Licensee becomes liable to disciplinary action by the Institute for any of the reasons or by virtue of the happening of any of the events set out in By-Law 40;
 - 15.2 The Licensee breaches any of the:
 - 15.2.1 By-Laws, or
 - 15.2.2 Regulations,and fails to rectify such breach within such period as may be specified by the Institute;
 - 15.3 The Licensee breaches any provision of the Rules and fails to rectify such breach within such period as may be specified by the Institute.
16. The Institute may from time to time amend the Rules, but no proposed alteration shall have effect until such alteration has been approved by the Australian Competition and Consumer Commission and advertised by the Registrar in accordance with Section 178 of the Trade Marks Act.
17. No waiver by the Institute of any breach, default or omission by a Licensee in the performance or observance of any of the Rules shall be deemed to be a waiver of any other or subsequent breach, default or omission of the same or a different kind under the Rules.