

STAKEHOLDER NOTICE

4 July 2018

Access to confidential information given to the QCA for its declaration reviews

The QCA has received several submissions in respect of the declaration reviews which include information over which parties have claimed confidentiality (**confidential information**). The QCA has not yet formally assessed these confidentiality claims pursuant to section 187 of the *Queensland Competition Authority Act 1997 (QCA Act)*. The QCA has, however, only published these submissions on its website with the confidential information redacted. The QCA anticipates further submissions being provided to it where confidentiality is similarly claimed in relation to certain information.

While the QCA recognises the need to respect the confidentiality of commercially sensitive information, the QCA also recognises that natural justice may require that an interested party is given access to confidential information provided to the QCA by another person in respect of the declaration reviews.

To balance these obligations, and considering the time bound nature of the declaration review process, the QCA proposes the following steps, in respect of the declaration reviews only, to manage requests for access to confidential information by interested parties in a timely manner.

- (1) If a person wishes to provide confidential information to the QCA they should claim confidentiality in respect of the information at the time it is submitted. The QCA's requirements for making confidentiality claims are outlined in the staff Issues Paper.
- (2) The QCA will not formally assess the confidentiality claim under section 187 of the QCA Act at that stage, but will only publish submissions on its website with the confidential information redacted.
- (3) An interested party who seeks access to that confidential information should contact the QCA, explaining why it requires access to the relevant information and identifying the persons to whom they wish access to be given.
- (4) The QCA will be prepared to disclose confidential information only where it considers that natural justice requires an interested party to be given access to the information, and then only to identified persons after they have given a confidentiality undertaking in a form approved by the QCA (attached).
- (5) Ordinarily, the QCA's preference will be to limit the disclosure of confidential information to an interested party's external advisers and consultants. If an interested party wishes confidential information to be disclosed to an employee (or other contractor involved in the conduct of its business), it will need to demonstrate that disclosure to such a person is unavoidable, and will not jeopardise the commercial interests of the provider.
- (6) For step 4, the QCA will inform the provider of the confidential information and identify the persons to whom the confidential information is to be given at least 5 working days before the information is disclosed.
- (7) If the provider of the confidential information opposes the disclosure of the information, on the conditions outlined above, the QCA will formally assess confidentiality claim in accordance with section 187 of the QCA Act. Please note that if the QCA is unable to give access to information which it is bound to keep confidential, it may affect the QCA's ability to take the relevant information into account in making its recommendation to the Minister or the weight that can be given to the information.

Queensland Competition Authority – Review of Declarations

Confidentiality Undertaking

I,(name),.....(occupation), of
.....(address), on(date), hereby undertake to the QCA and
to each Confidentiality Claimant (in relation to that Confidentiality Claimant's Confidential Information only) as
follows:

- (1) In this undertaking:
 - (a) **Confidential Information** means information submitted to the QCA for the purpose of the Declaration Review which the QCA has agreed to treat as confidential information.
 - (b) **Confidentiality Claimant** means, in respect of particular Confidential Information, the person or entity who has made a claim of confidentiality in respect of that information.
 - (c) **Declaration Review** means the investigation and recommendation by the QCA, and the decision by the Minister, in relation to the declaration of each service taken to be declared by section 250 of the QCA Act.
 - (d) **Interested Party** means an interested person or entity who has made, or wishes to make, a submission to the QCA for the purpose of the Declaration Review.
 - (e) **QCA** means the Queensland Competition Authority.
 - (f) **QCA Act** means the *Queensland Competition Authority Act 1997*.
 - (g) **Support Staff** means persons providing administrative assistance and includes secretaries, administrative assistants, IT staff and printing staff.
- (2) I acknowledge I am being provided with specific Confidential Information for the purpose of the Declaration Review. I will not use the Confidential Information for any other purpose.
- (3) I will keep the Confidential Information confidential and will not, directly or indirectly, disclose it to any person other than:
 - (a) the QCA, QCA staff and any person assisting the QCA;
 - (b) another person retained by the same Interested Party for the purpose of the Declaration Review who has provided a confidentiality undertaking to the Confidentiality Claimant in the same form as this undertaking;
 - (c) My Support Staff and Support Staff of the persons listed in paragraphs 3(a)-(b); or
 - (d) with the prior written consent of the Confidentiality Claimant.
- (4) I will:
 - (a) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
 - (b) keep the Confidential Information under my effective control; and
 - (c) immediately notify the Confidentiality Claimant in writing of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information of which I become aware, and provide any reasonable assistance requested by the Confidentiality Claimant in relation to any action that the Confidentiality Claimant may take against any person for such unauthorised use or disclosure.

- (5) Following the final decision of the Minister in the Declaration Review, I will do one of the following:
 - (a) continue to maintain the Confidential Information under my effective control and safeguard it from unauthorised access or use; or
 - (b) destroy the Confidential Information in my possession, custody or control; or
 - (c) return or cause to be returned the Confidential Information in my possession, custody or control, to the Confidentiality Claimant (or its external solicitors).
- (6) I may only vary the terms of this undertaking with the prior written consent of the Confidentiality Claimant.
- (7) I acknowledge that my obligations in this undertaking will continue after the final decision of the Minister in the Declaration Review and the destruction or return of the Confidential Information to the Confidentiality Claimant.
- (8) I acknowledge that damages are not an adequate remedy for the breach of my obligations in this undertaking and that the Confidentiality Claimant shall be entitled to equitable relief (including, without limitation, injunctive relief) in respect of any threatened or actual breach of my obligations in this undertaking.
- (9) Upon signing this undertaking I will immediately provide the original to the Confidentiality Claimant and a copy to the QCA (at ravi.prasad@qca.org.au).

SIGNED by _____

in the presence of:

Signature of witness, whose name and address appears below

.....(name)

.....(address)