

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

## EXPLANATORY STATEMENT

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The Independent Competition and Regulatory Commission has determined disclosure guidelines 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.

The Commission’s disclosure guidelines set out the approach that will be taken by the Commission to the general disclosure of confidential information under section 46 of the Act. The guidelines also set out the matters that the Commission will consider in assessing a claim that confidential information that has been provided to the Commission should not be disclosed.

The disclosure guidelines apply only to the disclosure of confidential information by the Commission under section 46 of the Act, and do not apply to other disclosures that are specifically provided for under the ICRC Act.

It is important to note that the disclosure guidelines relate to disclosure of information that is *confidential information*, as defined by section 3 of the ICRC Act:

“**confidential information** means information given to the Commission that was, when it was given –

(a) stated by the person giving it to be confidential or commercially sensitive;  
or

(b) contained in an exempt document within the meaning of the *Freedom of Information Act 1989*.”

The fact that information falls within the definition of confidential information under the Act is not sufficient to prevent the Commission from disclosing that information. In certain circumstances the Commission may, with reference to its disclosure

guidelines, disclose information despite its classification under the ICRC Act as confidential.

In deciding whether to disclose confidential information, the Commission will consider whether the information in question:

- is identified specifically rather than in generic or global terms
- whether the information is subject to any requirement under law in relation to use, confidentiality or disclosure of information.

The Commission will only disclose confidential information if it considers that the disclosure would not cause detriment to any person, or, although the disclosure would cause detriment to a person, the public benefit in disclosing the information outweighs that detriment.

The party seeking to maintain confidentiality of the information must show that there is a significant risk of loss or damage to its interests if the information is disclosed.

If the Commission considers the public benefit in disclosure outweighs the detriment that the disclosure would cause to any person, the Commission may disclose the information. Assessment of the public benefit in disclosure of confidential information is a discretionary judgment to be exercised by the Commission on a case-by-case basis.