



Notification of proposed collective bargaining with or without a boycott or exclusive dealing or resale price maintenance

Guidance in completing your notification to the ACCC

To lodge a notification of proposed:

collective bargaining with or without a boycott or

exclusive dealing or

resale price maintenance

(the **notification**), you should include the information, data and documents outlined in this form. Where possible, each question should be answered fully and be substantiated with evidence. If a question is not relevant or where information is not available and cannot be reasonably estimated, please provide a brief explanation.

If the ACCC is not satisfied that the statutory test is met, it cannot allow the notification.

It is an offence to knowingly provide false or misleading information to the ACCC. Refer to section 137.1 of the *Criminal Code* (Cth).

Key points for lodging your notification

- We encourage you to consult the relevant guidelines and contact the ACCC at adjudication@acc.gov.au for a pre-lodgement discussion to clarify what information and evidence may be needed to assess your notification.
- Failure to provide sufficient information may render the notification invalid or otherwise impact the ACCC's ability to assess your notification.
- You should provide all relevant information and evidence you intend to rely on.
- Less weight will likely be given to a statement or submission that is not supported with corroborating evidence.
- A valid notification **must** contain:
 - a public version of your notification for publication on the public register. You should provide a clearly marked confidential version if you wish to claim confidentiality for parts of your notification. All confidentiality claims must be substantiated. The public

version must contain sufficient information to enable public consultation on your notification

- a signed declaration by the notifying party
- payment of the relevant fee (\$1,000 collective bargaining; \$2,500 exclusive dealing; \$1,000 resale price maintenance).

Information

Notifying party

1. Provide details of the notifying party, including:

1.1. name, address (registered office), telephone number, and ACN

1.2. contact person's name, telephone number, and email address

1.3. a description of business activities

1.4. email address for service of documents in Australia.

ARAG ARAG Services Australia Pty Ltd Level 2, 2 Bulletin Place, Sydney NSW 2000 [REDACTED] ACN 627 823 198	Antoinette von Wendt [REDACTED] [REDACTED]
HSAB HDI GLOBAL SPECIALTY SE a company registered in Germany and whose registered office is at Roderbruchstraße 26, 30655 Hannover, Germany with registered number HRB 211924 acting through its Australian branch Tower 1, Level 33, 100 Barangaroo Avenue, Sydney NSW 2000 ABN 58 129 395 544	Mark Fleiser [REDACTED] [REDACTED]

ARAG is an underwriting agency who intends to enter into an agency agreement with HSAB under which ARAG will be authorised to act on HSAB' behalf. ARAG intends to be an Authorised Representative of HSAB under its Australian Financial Services Licence.

HSAB is authorised to carry out insurance business in Australia by the Australian Prudential Regulation Authority. HSAB specialises in general insurance products and will underwrite the legal expense insurance (LEI) offered by ARAG on behalf of HSAB as the insurer. HSAB's AFSL number is

458 776. Liability in respect of the policies of the LEI products which are sold and administered by ARAG, will always remain with the insurer, HSAB.

Policyholders will pay the premium for the LEI products to HSAB as the insurer, which will be collected by ARAG on behalf of HSAB. However, the policy will be administered by ARAG. Under the agency agreement with HSAB, ARAG will be granted a delegated authority by HSAB to enter into, vary or cancel LEI policies and handle claims for LEI policies on HSAB' behalf.

ARAG will receive a commission from HSAB. ARAG will retain a percentage of the total premium payable (excluding government charges) and will receive this commission for each policy issued or renewed. ARAG may also charge an administration fee for the services provided to LEI customers, in addition to the premium.

Where a third party, such as a broker, refers a customer to ARAG, ARAG shares with that third party a part of the commission earned.

Details of the notified conduct

2. Indicate whether the notified conduct is for:

2.1. exclusive dealing (s. 47 of the Competition and Consumer Act 2010 (Cth) (the Act));

2.2. resale price maintenance (s. 48)

2.3. collective bargaining (s. 93AB). If the notified conduct is for collective bargaining, whether the notified conduct includes a collective boycott.

The notified conduct is for exclusive dealing.

3. Provide details of the notified conduct including:

3.1. a description of the notified conduct

ARAG proposes to offer LEI to customers in Australia, which will be underwritten by HSAB. LEI is a type of insurance which covers policyholders against certain legal costs and expenses of legal action brought against the policyholder by another individual or institution, or against certain legal costs and expenses of legal action initiated by the policyholder, provided that the initiated action has a certain potential of success.

ARAG [REDACTED] intends to sell the LEI products in Australia directly via ARAG and via brokers, intermediaries, insurers and other underwriting agencies. [REDACTED] the LEI products will not be available to be purchased online.

Consistent with ARAG's products offered overseas, cover under the LEI product will be subject to the customer using an appointed legal advisor chosen by ARAG and retained by the policyholder as shown in the extract from the policy terms and conditions attached to this notification at Annexure A.

The terms and conditions of the policies will also allow ARAG to refuse to provide further legal costs and expenses associated with a claim where a policyholder refuses to settle a claim following advice from an appointed advisor to do so.¹

3.2. any relevant documents detailing the terms of the notified conduct

Full versions of the draft terms and conditions for ARAG's LEI business product are provided at Annexure B, and for its individual product at Annexure C. These documents contain commercially sensitive information which is confidential to ARAG. These documents are provided in confidence and should be treated as protected information for the purposes of s 155AAA of the *Competition and Consumer Act 2010*.

3.3. the rationale for the notified conduct

ARAG's primary reasons for the notified conduct are to:

- control the quality of legal services that are provided under the policy;
- ensure that legal services claimed under the policies are processed in a timely manner (as panel firms are usually more efficient because they understand ARAG's products and when a claim is able to be made); and
- reduce administrative burden (by dealing with a select number of firms rather than multiple firms).
- reduce the costs incurred in providing legal services to policyholders (as panel firms will ordinarily have lower rates, negotiated with ARAG);
- ensure greater cost certainty, which allows ARAG to calculate its premiums with greater accuracy;

This notified conduct is consistent with ARAG's LEI operations internationally, and is not specific to the Australian market. ARAG always works with lawyer panels when providing LEI products and this is part of its worldwide business model.

In Australia it is particularly important that ARAG is able to work with a lawyer panel because legal fees are not regulated, as they are in some other jurisdictions. ARAG would be forced to reconsider entering the Australian market if it could not make use of a closed panel arrangement.

The reason for the policy terms that enable ARAG to refuse to pay further claims to policyholders who do not follow the advice of an appointed advisor, is to control the legal expenses and costs incurred by policyholders and to ensure that on-going legal expenses are only paid out to policyholders who accept the legal advice that they receive.

3.4. any time period relevant to the notified conduct.

ARAG intends to begin offering LEI products from June 2019.

¹ See clause 2(b) of the Policy Conditions set out in Annexure A.

4. Provide documents submitted to the notifying party's board or prepared by or for the notifying party's senior management for purposes of assessing or making a decision in relation to the notified conduct and any minutes or record of the decision made.

As explained in the section above, the notified conduct is consistent with ARAG's operations in other jurisdictions. ARAG decided to enter the Australian market in May 2018.

As such, a specific decision to undertake the notified conduct in respect of ARAG's Australian operations is not readily identifiable. Further information on the Canadian and United Kingdom operations can be found at:

- <https://www.arag.ca/>
- <https://www.arag.co.uk/>

5. Provide the names and/or a description of the persons or classes of persons who may be directly impacted by the notified conduct (including targets in collective bargaining or boycott conduct) and detail how or why they might be impacted.

Currently, the law firms that have been selected for the LEI product panel are:

- James Patrick Tuite T/AS James Tuite & Associates Lawyers (ABN 92 584 625 914);
- Kennedys (Australasia) Pty Ltd (ACN 119 302 742);
- Gilchrist Connell Pty Ltd (ACN 131 087 673); and
- Gillis Delaney Lawyers (ABN 98 691 183 536).

We may add other law firms in the future or terminate with some of the above to meet business needs.

There are an abundance of competitors with these firms in the Australian legal services market.

Businesses and individuals who purchase ARAG's LEI product will also be impacted by the notified conduct as they will be required to use the panel law firms to the extent they wish for their legal expenses to be covered by their LEI policy. At the time that this notification was submitted ARAG has not yet launched its LEI product, and as such there are no identifiable customers.

Market information and concentration

6. Describe the products and/or services, and the geographic areas, supplied by the notifying parties. Identify all products and services in which two or more parties to the notified conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

The products to be supplied by ARAG are LEI products to businesses and private individuals. The panel firms will supply legal services.

Legal expense insurance

ARAG will offer its LEI products Australia-wide. These will be provided to businesses as well as private individuals.

ARAG will also offer LEI products for groups of individuals. For these products the policyholder will enter into a master policy which will cover a group of people. Typically, the policy holder would be an employer or an entity such as a union or business association, and the policy would cover the employees or members of the group.

Legal services

The panel law firms will provide legal services to LEI policyholders which are covered by their policy. It is likely that these law firms will provide legal services to other clients. The specific services covered by the LEI policies are detailed in the policy terms and conditions set out in Annexures B and C.

No overlap or vertical relationship

ARAG supplies insurance products while the law firms supply legal services. There is no overlap with the products supplied and ARAG and the law firms do not compete with each other. Likewise there is no vertical relationship between the insurance products provided by ARAG and legal services provided by law firms. Neither ARAG or HSAB are law firms and will not be providing legal services to LEI policyholders.

7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.

The relevant industries are the legal services industry in Australia and the legal expense insurance industry in Australia.

Australian Legal Services Industry

Four law firms have been carefully selected who have the expertise to provide the legal services covered by the LEI product. The legal services to be provided are across a number of areas of law as detailed in Annexures B and C. ARAG has entered into a Panel Firm Agreement with each appointed law firm.

More widely, Australian legal services are provided to individuals and businesses in a range of different ways including through fixed fee arrangements, time costing and pro bono. Practitioners choose the extent to which they specialise in particular areas of law. It is common for practitioners to have an area of specialisation but there are many practitioners who provide legal services across a range of areas of law.

Australian Legal expense insurance industry

As explained above ARAG intends to offer its LEI products to both businesses and private individuals, as well as group products.

Initially ARAG will sell its LEI products in Australia through broker networks, with the brokers acting as agents for ARAG.

The risk in the LEI policies issued attaches to HSAB as the insurer only.

ARAG acts as agent for HSAB as the insurer and not as the policyholders' agent.

8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

N/A - there are no overlapping products or services.

9. In assessing a notification, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:

9.1. existing competitors

9.2. likely entry by new competitors

9.3. any countervailing power of customers and/or suppliers

9.4. any other relevant factors.

Legal Services Industry

The supply of legal services to ARAG's LEI policyholders will occur in a broader market that includes the supply of legal services to businesses and individuals throughout Australia. There is nothing unique about the kinds of legal services that the panel firms will offer.

In Australia, competition for the supply of legal services is high with a very large number of existing competitors. Concentration in the market is low and the barriers to entry are not high – new lawyers are constantly being admitted to practice and likewise law firms regularly enter the market.

The conduct is unlikely to have any meaningful effect on competition for the supply of legal services because:

- Specifying the lawyer that the policyholder must use will not affect the ability of other lawyers in the market to supply their services to businesses and individuals that do not hold ARAG LEI policies. Only a very small percentage of purchasers of legal services will

have LEI, let alone ARAG's LEI product (ARAG currently has not customers). Lawyers will still face the same vigorous competition in the supply of their services.

- Firms on ARAG's panel are likely to be constrained in their ability to raise prices or reduce the quality of their product because they will have a retainer agreement with ARAG that specifies the range of costs that they can charge. They will also be constrained by the risk of being replaced on the panel should they not provide competitive legal services.

Australian Legal Expense Insurance Industry

The market for LEI is in its infancy in Australia. However, there are a number of competitors offering similar LEI products to ARAG for legal costs and expenses as part of broader liability products including employment practices, management liability and home and contents insurance. The general insurance industry in Australia is large and extremely competitive.

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

If a business is unhappy with the notified conduct they will have the option of acquiring a LEI product from an alternative supplier.

We are not aware of any LEI products actively offered to individuals [REDACTED], or legal costs and expenses covered as part of a home contents or motor vehicle insurance policy.

However, the barriers to entering the LEI market are low. The main barrier is the requirement for insurers to hold an Australia Financial Services Licence. All primary insurers in Australia hold these licenses, which means that it would be relatively easy for a primary insurer to enter the LEI market and start supplying LEI products if there is demand for them. This will provide an effective constraint on ARAG. The market for the provision of other insurance products, such as home and contents or motor vehicle insurance, is intensely competitive with a large number of competitors.

At this stage, ARAG has not entered the Australian market for the supply of LEI products, and it is not certain whether ARAG would enter the Australian market if it cannot nominate the lawyers that its policyholders must use. Therefore, the notified conduct is likely to enhance competition by making a new product available that may not otherwise be available in Australia.

Public benefit

10. Describe the benefits to the public that are likely to result from the notified conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

The key benefit of the notified conduct is that it will allow ARAG to enter Australia and offer its LEI products which are already available in the UK, US, Canada and other parts of Europe. These products offer an alternative means of accessing justice and legal services which customers may not have been able to access, but for this product. The product allows a policyholder to cover legal costs and expenses and reduce the risk of various legal disputes arising.

[REDACTED]

- [REDACTED]
- [REDACTED]

The notified conduct will allow ARAG to ensure that its customers are provided with high quality legal services under the policy, as ARAG will ensure that the panel firms are appropriately qualified and will be able to hold those firms to account for their performance.

ARAG’s entry will significantly increase competition in the Australian market for LEI products, as only a small number of products are currently being offered in Australia.

Public detriment (including likely competitive effects)

11. Describe any detriments to the public that are likely to result from the notified conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC’s assessment of the detriments.

The conduct will not result in any public detriments. In particular, the notified conduct will not have any anti-competitive effect for the reasons identified in section 9 above.

Contact details of relevant market participants

12. Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties, such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.

Current panel law firms

Panel Law Firm	Key Contact Person
Gilchrist Connell Lawyers	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

	<p>[REDACTED]</p> <p>[REDACTED]</p>
Kennedys Lawyers	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
James Tuite & Associates	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Giles Delaney Lawyers	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

Customers

The notifying parties note that as they have not begun operations in Australia they do not yet have any customer information that can be provided at this time.

Any other information

13. Provide any other information you consider relevant to the ACCC's assessment of the notified conduct.

Further information about ARAG's services internationally can be found at:

- <https://www.arag.ca/>
- <https://www.arag.co.uk/>
- <https://www.araglegal.com/>

Declaration by notifying parties

Authorised persons of the notifying party must complete the following declaration.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

ARAG

Signature of authorised person

Office held

(Print) Name of authorised person

This day of 20

Note: If the Notifying Party is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Notifying Party, this fact must be stated.

HSAB

Signature of authorised person

Office held

(Print) Name of authorised person

This day of 20

Note: If the Notifying Party is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Notifying Party, this fact must be stated.