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OUR REF: EMF:SHD:1089850  
CONTACT: STEPHEN DOYLE

1 November 2002

Australian Competition and Consumer Commission  
3rd floor, East Point Plaza  
233 Adelaide Terrace  
Perth WA 6000

Dear Sir / Madam

**NOTIFICATION OF EXCLUSIVE DEALING – RAC DRIVER TRAINING SCHEME**

We act for RAC Driver Training Pty Ltd (ACN 099 497 757) and the Royal Automobile Club of Western Australia (Incorporated).

For the purposes of providing a notification under section 93(1) of the *Trade Practices Act 1974* (Cth) (“TPA”) in respect of conduct that may be prohibited by section 47(6) of the TPA, we **enclose**:

1. Exclusive Dealing Notification from RAC Driver Training Pty Ltd;
2. Exclusive Dealing Notification from the Royal Automobile Club of Western Australia (Inc.);
3. a submission accompanying the Exclusive Dealing Notification on behalf of both of these entities (“Submission”); and
4. a cheque in the amount of \$1,200 (being the lodgement fees).

**Request for confidentiality**

The details of the Franchisee Benefits set out in paragraph 12 of the Submission are commercially sensitive and the RAC Group requests that the information in this paragraph be kept confidential. Therefore when the Submission and accompanying notifications are placed on the public register of notifications lodged with the ACCC, the RAC Group requests for the information in paragraph 12 to be censored so that it is not publicly available.

Yours faithfully  
JACKSON McDONALD

Enc.

EMF #189551 V3

CHAIRMAN  
GRAHAM GOERKE

PARTNERS  
GREGORY BOYLE  
JONATHAN ILBERY  
JOHN MENGLER  
NEIL GENTILLI  
TIMOTHY MASON  
STEPHEN DOYLE  
PHILIP LANSELL

RICHARD SANDOVER  
PIET JARMAN  
PETER CAVE  
PAUL FYE  
JUNE BARTLETT  
DAVID McKENNA  
BASIL GEORGIU  
DAVID CARTER  
DAVID SASH  
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RANI ARIA-RETNAM  
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JOHN PANEGYRES  
GARRY NUTT  
ALEX LUSTIG

## COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 – Sub-section 93 (1)*

## EXCLUSIVE DEALING:

## NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47 (2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

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(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) **Name of person giving notice:**

The Royal Automobile Club of Western Australia (Incorporated) ("Applicant")

*(See Direction 2 on the back of this Form)*(b) **Short description of business carried on by that person:**

The Applicant is an incorporated association that offers a wide range of motoring and allied services including vehicle breakdown and towing assistance, vehicle inspections and technical advice, to its members.

(c) **Address in Australia for service of documents on that person:**

228 Adelaide Terrace, Perth Western Australia 6000

2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

Motoring club goods and services.

(b) **Description of the conduct or proposed conduct:**

The conduct of the Applicant offering discounts, free membership and goods and services on the condition that the recipient or the proposed recipient enter into a franchise agreement with RAC Driver Training Pty Ltd (ACN 099 497 757).

*(See Direction 4 on the back of this Form)*3. (a) **Class or classes of persons to which the conduct relates:**

Driving instructors who enter into a franchise agreement with RAC Driver Training Pty Ltd.

(b) **Number of those persons:**

(i) At present time: 6

(ii) Estimated within the next year: 5 – 9

(c) **Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

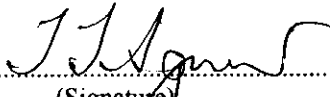
Name of Franchisee	Business Address	Telephone No.
Mr. Daruosh Aghdassi	126 Anaconda Drive, Gosnells	0403 829 288
Mr. Brian Hedley	8 Birkdale Close, Currambine	0419 809 174
Mr. Maniam (Charles) Parthipen	5 Strawberry Drive, Armadale	0413 383 183
Mr. Mark Wenn	31 Leschenault Street, Roleystone	0418 952 773
Mr. Ali Currimbhoy	2 Finlay Court, Rivervale	0438 017 433
Mr. Donald Buchanan	4 Finch Court, Kingsley	0401 496 130

4. Name and address of person authorized by that person giving this notice to provide additional information in relation to this notice:

Mr. Craig McKemmish  
 Driver Training Operations Manager  
 228 Adelaide Terrace, Perth Western Australia 6000

Dated ..... 1/10/..... 2002

Signed by/on behalf of the person giving this notice:

  
 .....  
 (Signature)  
 TERRY T. AGNEW  
 .....  
 (Full Name)  
 CEO, RAC (WA)  
 .....  
 (Description)

## DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

## NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47(6) or (7), or paragraph 47(8)(c) or (9)(d), of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

## COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 – Sub-section 93 (1)*

## EXCLUSIVE DEALING:

## NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47 (2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

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(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) **Name of person giving notice:**

RAC Driver Training Pty Ltd (ACN 099 497 757) ("Applicant")

*(See Direction 2 on the back of this Form)*(b) **Short description of business carried on by that person:**

The Applicant was registered as a company with the Australian Securities & Investments Commission on 6 February 2002 and has entered into franchise agreements, as the franchisor, for the driver training business with approved driving instructors.

(c) **Address in Australia for service of documents on that person:**

228 Adelaide Terrace, Perth Western Australia 6000

2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

Motoring club goods and services.

(b) **Description of the conduct or proposed conduct:**

The conduct of The Royal Automobile Club of Western Australia (Incorporated) offering discounts, free membership and goods and services on the condition that the recipient or the proposed recipient enter into a franchise agreement with the Applicant.

*(See Direction 4 on the back of this Form)*3. (a) **Class or classes of persons to which the conduct relates:**

Driving instructors who enter into a franchise agreement with the Applicant.

(b) **Number of those persons:**

(i) At present time: Six

(ii) Estimated within the next year: 5 – 9

(c) **Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

Name of Franchisee	Business Address	Telephone No.
Mr. Daruosh Aghdassi	126 Anaconda Drive, Gosnells	0403 829 288
Mr. Brian Hedley	8 Birkdale Close, Currambine	0419 809 174
Mr. Maniam (Charles) Parthipen	5 Strawberry Drive, Armadale	0413 383 183
Mr. Mark Wenn	31 Leschenault Street, Roleystone	0418 952 773
Mr. Ali Currimbhoy	2 Finlay Court, Rivervale	0438 017 433
Mr. Donald Buchanan	4 Finch Court, Kingsley	0401 496 130

**4. Name and address of person authorized by that person giving this notice to provide additional information in relation to this notice:**

Mr. Craig McKemmish  
 Driver Training Operations Manager  
 228 Adelaide Terrace, Perth Western Australia 6000

Dated ..... 11/10/2002

Signed by/on behalf of the person giving this notice:

*Terry T Agnew*  
 .....  
 (Signature)  
 TERRY T AGNEW  
 .....  
 (Full Name)  
 DIRECTOR  
 .....  
 (Description)

#### DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

#### NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47(6) or (7), or paragraph 47(8)(c) or (9)(d), of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

## **SUBMISSION IN SUPPORT OF NOTIFICATIONS OF EXCLUSIVE DEALING RELATING TO FRANCHISEE BENEFITS**

1. This submission is in support of separate exclusive dealing notifications by the Royal Automobile Club of Western Australia (Inc) ("RAC Club") and RAC Driver Training Pty Ltd ("RAC Driver Training"), in connection with the franchise agreement entered into by RAC Driver Training, as franchisor, with approved driving instructors within Western Australia ("Franchisees") for the business of driver training ("Franchise Business") and the provision of associated benefits to the Franchisees.

### **The RAC Club**

2. The RAC Club is a non-profit organisation, which under the provisions of the *Associations Incorporations Act 1987* (WA) and its Rules, cannot trade. It provides motoring goods and services to members in return for an annual subscription fee. Its subsidiaries have been formed to carry on trading enterprises that provide further services and provide funds to further the provision of benefits.
3. The RAC Club and its subsidiaries ("RAC Group") are a mutual incorporated group the ultimate members of which cannot, under the provisions of the *Associations Incorporations Act* and its Rules, share in profits. It operates for the mutual benefit of those ultimate members. Its activities and trading are carried on through the subsidiaries for the mutual benefit of RAC members and to provide a wider community service.
4. Membership of the RAC Club is open, and on joining, a member of the public is usually required to pay one-off joining fee, which is currently \$33.00, and an annual subscription fee for membership.
5. As at 30 June 2002, the RAC Club had 421,382 members.
6. The RAC Group comprises the RAC Club (an incorporated association under the *Associations Incorporations Act*), RACWA Holdings Pty Ltd and its subsidiaries RACI Pty Ltd, RAC Travel Services Pty Ltd, RAC Glass and Security Services Pty Ltd, RAC Motoring and Services Pty Ltd, RAC Marketing and Distribution Pty Ltd, RAC Home Loans Pty Ltd, RAC Security Services (WA) Pty Ltd and RAC Driver Training Pty Ltd. RAC Finance Limited is also a wholly owned subsidiary of RACWA Holdings Pty Ltd, and RAC Finance Property Developments Pty Ltd is a wholly owned subsidiary of RAC Finance Limited.
7. The governing body of the RAC is the Council, which comprises 15 councillors elected by the members of the RAC Club. RACWA Holdings Pty Ltd has a separate Board of Directors comprising senior management and representatives from the Council.

### **RAC Driver Training**

8. RAC Driver Training was registered as a company with the Australian Securities & Investments Commission on 6 February 2002. It was specifically incorporated to enter into franchise agreements as franchisor in order to grant rights to Franchisees to conduct the Franchise Business.



9. The purpose of this franchise is to offer driving instructors an opportunity to run their own business using the name of RAC Driver Training. The Franchisees are allocated certain territories within Western Australia, within which they may conduct the Franchise Business.
10. As part of the franchise agreement and to guarantee uniformity in service and training, each Franchisee is required to conform to specific RAC standards. However the Franchisees also receive a number of benefits from the RAC Group by virtue of entering into a franchise agreement. The benefits are discussed in more detail below at paragraph 12.
11. These benefits are currently available to 6 Franchisees and it is estimated that the benefits will be available to a further 5 – 9 Franchisees by the end of the 2003 financial year.

#### **Proposed Offer**

12. As part of the franchise agreement RAC Driver Training has offered to the Franchisees (to the extent it is able to), and has procured the RAC Club to provide, the following benefits:
  - (a) RAC PLUS Membership for the vehicle used in relation to the franchise business;
  - (b) RAC fleet discount on purchase of a new vehicle through the RAC fleet discount programme;
  - (c) initial vehicle signage (sticker or magnetic at franchisee's option);
  - (d) option to purchase existing RAC driver training vehicles at a written down price less \$1,500.00 (until all such vehicles are purchased);
  - (e) vehicle servicing at RAC fleet cost; and
  - (f) initial issue of two new and two second-hand RAC badged shirts,(collectively referred to as the "Franchisee Benefits").

#### **Possible Application of the Trade Practices Act**

13. On one interpretation of the franchise agreement, the offer of the Franchisee Benefits is conditioned by the requirement that the proposed acquirer of the Franchisee Benefits must have first entered into a franchise agreement with RAC Driver Training in order to be eligible for these benefits.
14. Hence section 47(6) of the Trade Practices Act may arguably apply.

#### **Notifications lodged**

15. Notifications are lodged on behalf of:
  - (a) the RAC Club; and
  - (b) RAC Driver Training,

as it is these entities that will be offering the Franchisee Benefits.

**Market Position of RAC**


16. Neither the RAC Club nor RAC Driver Training have sufficient market power in the markets they operate to force a member of the public to become a member of the RAC Club.
17. The Franchisee Benefits simply confer additional benefits to these Franchisees who wish to obtain the benefit of using the name "RAC Driver Training". The Franchisee Benefits are only open to a very small number of people and there is no actual or practical compulsion on members of the public to join the RAC Club.

**Public Benefit / Detriment**

18. In the Applicant's opinion this offer and conduct will create a public benefit, in that the Franchise Business will offer a new service to the public. The Franchise Business can only operate within the context of the RAC Group providing specific guidelines on how to conduct the business to ensure uniformity and to maintain the highest possible standards. The onerous requirements of conducting the Franchise Business have been tempered somewhat by the provision of these additional Franchisee Benefits, which are only available because the Franchisee is purchasing the right to use the name "RAC Driver Training". The free RAC PLUS Membership ensures that each of the Franchisee's vehicles receive the same service and therefore maintains an appropriate safety standard.
19. Any perceived detriment that this offer is only being made to Franchisees is diminished by the fact that this is necessary to ensure continuity of service and the RAC Group's reputation in the Franchise Business.
20. For the reasons outlined above, the public benefits to this offer clearly outweigh any detriment that may result from this conduct and furthermore, in the Applicant's opinion no public detriment arises from this conduct. The Applicant requests that the enclosed notifications be allowed to stand.

The Applicant provides this submission in support of its notification of exclusive dealing.

Dated: <sup>BT</sup> 1 October August 2002

  
\_\_\_\_\_  
TERRY AGNEW, RAC  
228 Adelaide Terrace  
PERTH WA 6000