

Our ref: 0253147

14 May 2003

Mr T Grimwade
General Manager Adjudication
Australian Competition &
Consumer Commission
Level 7
123 Pitt Street
By Hand Delivery

FILE No:

DOC:

MARS/PRISM

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Brisbane
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Dear Sir

Health Professionals Insurance Australia Pty Limited
Exclusive Dealing Notification

We refer to the Exclusive Dealing Notification on behalf of Health Professionals Insurance Australia Pty Limited (HPIA), which is enclosed together with a cheque for \$100 by way of lodgement fee.

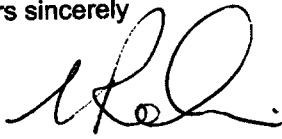
HPIA is a company formed to be an authorised general insurer (APRA licence pending) providing medical indemnity insurance from 1st July 2003 in accordance with the Federal Government's medical indemnity reform program. The existing benefits for medical practitioners expire in June and in order to ensure continuity of covers for members medical defence organisations must distribute the new insurance policies into the market place by mid May 2003.

HPIA is a wholly owned subsidiary of the Medical Indemnity Protection Society Limited (MIPS) which is a medical defence organisation and wishes to only insure its own members and the members of two other medical defence organisations affiliated with it namely the Medical Protection Society Tasmania and Queensland Doctors' Mutual.

HPIA is of the view that this arrangement is of a type that is beneficial to the members of MIPS and the two other medical defence organisations and the public generally. It assists in the management of risks associated with the activities of the health care professional and in doing so eliminates the unnecessary duplication of resources which in turn impacts on premiums and the costs of services to the public generally.

If there is any detriment from the proposed conduct, our client believes that it would be far outweighed by the benefits to the public.

Yours sincerely



Marianne Robinson
Manager – Compliance Solutions
Direct +61 2 9286 8017
Email marianne.robinson@phillipsfox.com

On behalf of Health Professionals
Insurance Australia Pty Limited.

Form G

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 (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.

1. (a) Name of person giving notice

Health Professionals Insurance Australia Pty Limited ACN 089 048 359 (HPIA)

(b) Short description of business carried on by that person

General insurance company (APRA licence pending) specialising in medical indemnity insurance

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

**C/o Marianne Robinson
Phillips Fox
255 Elizabeth Street
Sydney NSW 2000**

Email address: Marianne.robinson@phillipsfox.com

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

Supply of medical indemnity insurance services for health care professionals

(b) Description of the conduct or proposed conduct

HPIA proposes that its medical indemnity insurance cover only be made available to health care professionals who are already members of a specified medical indemnity organisation offering HPIA approved risk management services and HPIA approved specialist legal helpline services to members.

HPIA considers its proposed conduct will benefit the health care professionals and so the public by

- 1. rewarding the members of the MDOs who reduce their exposure to litigation**
- 2. controlling claims costs and so premiums through the use of MDOs who have specialist knowledge in the area of risk management**
- 3. encouraging health care professionals with good risk management records**
- 4. rewarding the members of the MDO which is a not for profit mutual owned by its members**

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3. (a) Class or classes of persons to which the conduct relates

Health care professionals (including medical practitioners) registered in Australian states and territories who are members of one of the three specified medical indemnity organisations

(b) Number of those persons--

- (i) At present time 11,000
- (ii) Estimated within the next year 12,000

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

N/A

4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice

**C/o Marianne Robinson
Phillips Fox
255 Elizabeth Street
Sydney NSW 2000**

Email : Marianne.robinson@phillipsfox.com

Dated

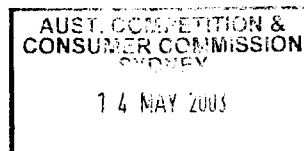
MAR May 2003

Signed by/on behalf of the applicant giving notice

(Signature)

(Full Name)

(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 sub-section 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.

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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 sub-section 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 sub-section 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 sub-section 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.

NOTIFICATION APPLICATION – SUPPORTING SUBMISSION

Submission in support of notification of exclusive dealing lodged by Health Professionals Insurance Australia Pty Limited (ACN 089 048 359) on 14th May 2003 accordance with section 93(1) of the Trade Practices Act 1974.

This submission supports a notification of exclusive dealing lodged by Health Professionals Insurance Australia Pty Limited (**HPIA**) with the Australian Competition and Consumer Commission (**Commission**) on 14th May 2003.

In accordance with the Commission's leaflet on authorisations and notifications (May 1999), this submission identifies the public benefits and detriment likely to result from the notified conduct. It also provides information on relevant products and markets.

1. The notified conduct

HPIA is a wholly-owned subsidiary of the Medical Indemnity Protection Society Limited (**MIPS**). MIPS is a not for profit mutual which has provided medical indemnity cover to its members as a discretionary mutual for a substantial number of years. One of the core services MIPS provides to its members are its legal helpline and access to its specialist risk management services. Other Australian Medical Defence Organisations (**MDOs**) also provide such services to their members.

The introduction of the Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Act 2003 no longer allows MDOs to provide professional indemnity services to members on a discretionary basis. From 1 July 2003 medical indemnity must be provided as an insurance contract issued by a general insurance company.

MIPS has incorporated HPIA to ensure that the members of MIPS, Medical Protection Society Tasmania (**MPST**) and the Queensland Doctors' Mutual (**QDM**) have continuity of medical indemnity coverage after 1 July 2003. The pooling of resources will allow the three MDOs to continue to provide services to their members and HPIA will provide the insurance cover required for their members after 1 July 2003.

HPIA wishes to offer its medical indemnity insurance cover only to the members of the three MDOs specified.

2. Relevant products and markets

The relevant market is medical Indemnity insurance for health care professionals in accordance with the Medical Indemnity(Prudential Supervision and Product Standards) Act 2002. The market is national in character but specific to medical practitioners and health care practitioners as defined in the Medical Indemnity(Prudential Supervision and Product Standards) Act 2002.

3. Public benefits

The proposed conduct is a competitive and realistic response by HPIA to provide medical indemnity insurance to the members who own its parent company and to the MDOs that have close links to it.

There are a number of public benefits which arise from the medical insurance being offered in this manner, including the following:

(a) Fostering business efficiency

The services and benefits provided through the insurance contract after 1 July 2003 would have continued to have been provided by the MDOs on a discretionary mutual basis, if not for the introduction of the government's reform legislation. The conduct proposed by the applicant will result in a more effective and efficient utilisation of the limited specialist resources which are currently available only through the MDOs.

By using the specialist risk management services and the expertise available through the specified MDOs, HPIA is able to outsource the provision of the services which it would have to acquire at a much higher cost and this in turn would be reflected in the premiums offered to the health care professionals. Further the ability of HPIA to acquire reinsurance, which is essential for its APRA licence is contingent on its ability to demonstrate a commitment to risk management practices and to foster a commitment to such practices with its policyholders. The MDOs provide these services as part of their membership benefits and have done so for many years.

The long involvement of MDOs in providing legal assistance to health care professionals is reflected in the unique expertise that they possess in a highly specialized market. The MDOs will continue to offer and supply services to their members. If HPIA is required to locate, train and employ similar specialists this would not be as an effective delivery of services and it would result in unnecessary duplication at an additional cost to the health care professionals

(b) Complies with public policy

The government reforms in the area of medical indemnity insurance anticipate MDOs having close links with the ownership of the entities providing medical indemnity insurance in compliance with the reform legislation. Not all MDO's have the financial capability to form their own general insurance company.

The short time frame between the passage of the legislation and the commencement of the new insurance model would not be possible were it not for the role of the MDOs in owning the general insurance companies providing the insurance cover.

HPIA is a wholly owned subsidiary of MIPS and it wishes to make its medical indemnity insurance covers available only to the members of three MDOs so that the members of each may have access to the insurance contracts required by the government's reform legislation. The Constitution of MIPS clearly states that its reserves and assets are the owned by its members. HPIA exists only because of the members of MIPS .

The Government's medical indemnity reform package of itself has introduced a new regulatory framework together with specific consumer protection and public benefit measures designed to encourage competition in the medical indemnity legislation.

The Government has accepted the recommendations of the Dawson Committee in respect of third line forcing only being an offence where the substantial lessening of competition is the purpose, effect or likely effect of the conduct. Once the Trade Practices Act is amended, HPIA's conduct would not be in breach of the third line forcing provisions as its effect is not to substantially lessen competition.

(c) Expansion of consumer choice

There are at least four other specialist insurance companies operating within Australia which will be offering medical indemnity insurance. There is also a wider general insurance market (domestic and international) so health care professionals who do not wish to insure with HPIA have choices both within the Australia and overseas insurance market.

(d) **Cost Control**

The structure proposed by HPIA will reduce the cost of providing the medical indemnity insurance services to health care professionals by avoiding unnecessary duplication and in achieving this will assist in controlling the cost of premiums which in turn impact on the cost of health care services.

4. Detriment

We submit that there is no detriment associated with the proposed conduct. The offer of insurance through HPIA enables the members of the MDOs to maintain ownership through their mutual of their specialist insurance cover in the format mandated by the government from 1st July 2003.

The provision of professional indemnity insurance through HPIA will enable an efficient and cost-effective delivery of this service to the member's of the MDO for this year's insurance covers commencing 1st July 2003 while continuing the provision of risk management services vital to maintaining the lower premiums,

It is submitted that the notified conduct is an initiative which complies with government policy and has demonstrable public benefits for consumers and the wider community.

5. Assessment

It is submitted that the proposed conduct does not result in a substantial lessening of competition, nor any anti-competitive detriment. In addition, there are distinct public benefits attaching to the offer of professional indemnity insurance to medical practitioners in this manner.

6. Conclusion

For these reasons and based on the information provided in this submission and the Form G Notification which it supports, it is submitted that the notified conduct should not be opposed by the Commission.