

20 December 2004

Mr Scott Gregson
A/g General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

FILE No:
DOC: 004/62373
MARS/PRISM:

Your Ref: C2004/1520
Our Ref: 04/04060

Dear Mr Gregson

Re: Notification of Exclusive Dealing lodged by Insurance Manufacturers of Australia Proprietary Limited, Insurance Australia Limited (formerly NRMA Insurance Limited), SGIO Insurance Limited, SGIC General Insurance Limited – Choice of Repairer Policy

I refer to your letter dated 29 November 2004 concerning notifications of third line forcing received by the Australian Competition and Consumer Commission (ACCC) from the IAG Insurers in relation to the choice of repairer policy.

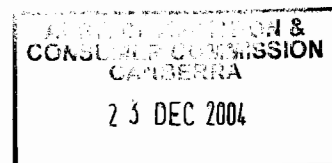
For your information, please find attached a copy of a letter I recently sent to both Mr Graeme Samuel, Chairman, ACCC, and Mr John Martin, Small Business Commissioner, ACCC, attaching a copy of a complaint made by the Victorian Automobile Chamber of Commerce to the Office of the Small Business Commissioner (OSBC) concerning this same matter.

If you have any queries about this matter, please do not hesitate to contact Mr David Hildebrand, Senior Project Officer, OSBC, on (03) 9651 7645.

Yours sincerely



Mark Brennan
Small Business Commissioner



Attach.



Office of the Victorian

Small Business Commissioner

Education | Investigation | Mediation | Representation

26 November 2004

Mr Graeme Samuel
Chairman
Australian Competition & Consumer Commission
GPO Box 520J
MELBOURNE VIC 3002

Our ref: 04/04060

Dear Mr Samuel

Re: IAG Insurers notification - complaint raised by the Victorian Automotive Chamber of Commerce.

I refer to the abovementioned matter lodged with the Office of the Small Business Commissioner (OSBC) pursuant to the *Small Business Commissioner Act 2003* (Vic.) and attach a copy of a complaint of an unfair market practice from Mr Darren Curry, Division Manager, Body Repairer Division, Victorian Automotive Chamber of Commerce (VACC). Mr Curry's correspondence attaches a copy of a Form G Notification of exclusive dealing conduct from the Insurance Australia Group (IAG). The VACC complaint concerns the IAG New Policy Option 'Choice of Repairer'. The complaint raises issues of the use of market power and its impact on the auto body repair industry.

As you are aware, the OSBC is established as an independent office under the *Small Business Commissioner Act 2003*. The main purpose of this Act, as set out in s.1, is:

"...to establish the office of the Small Business Commissioner to enhance a competitive and fair operating environment for small business in Victoria".

Amongst the functions and powers conferred on the Small Business Commissioner under s.5(2) of the *Small Business Commissioner Act 2003* are the following:

- "(a) to facilitate and encourage the fair treatment of small businesses in their commercial dealings with other businesses in the marketplace;*
- (b) to promote informed decision-making by small businesses in order to minimise disputes with other businesses;*

- (c) *to receive and investigate complaints by small businesses regarding unfair market practices and mediate between the parties involved in the complaint; and*
- (d) *to make representations to an appropriate person or body on behalf of a small business that has made a complaint referred to in paragraph (c);”*

Consistent with these provisions, in particular the purpose of the *Small Business Commissioner Act 2003*, and s.5(2)(d), I hereby make representations to the Australian Competition and Consumer Commission (ACCC) in relation to the VACC unfair market practice complaint. Accordingly, I would be grateful if the ACCC has regard to these representations, consistent with the role and powers of the ACCC under the *Trade Practices Act 1974* (C'wth). In so doing, I would also appreciate if you keep my Office informed about any developments regarding this matter.

For your additional information, I advise that I have written to the VACC confirming this OSBC representation to the ACCC. I have also indicated that the VACC may wish to make its own, separate, representations to the ACCC about this matter. Further, I have written to the IAG also advising it about this OSBC representation.

If you have any queries about this matter, please do not hesitate to contact Mr David Hildebrand, Senior Project Officer, OSBC, on (03) 9651 7645. Otherwise, I look forward to your consideration of the matters raised herein.

Yours sincerely



Mark Brennan
Small Business Commissioner

Attach.

CC. John Martin – Small Business Commissioner

APPLICATION For Investigation and Mediation of a Complaint by the Small Business Commissioner

Before completing this application please consider talking this matter over with your Solicitor or contacting the Office of the Small Business Commissioner on 9651 7624 .

Applicant Details, (ie Name of person or company making the application) *If there is more than one applicant, provide the name and address of the second and subsequent applicants, and of their representatives, using copies of the attachment to this form*

Status of person or company making the application, Please describe <i>VICTORIAN AUTOMOBILE CHAMBER OF COMMERCE</i>
--

If applicant is a company	OR	If applicant is not a company
Company Name <i>VACC</i>		Name
Company ACN or <u>ABN</u> (if known) <i>63009478209</i>		
Name of natural person contact for applicant <i>DARREN CURRY - DIV. MANAGER</i>		
Street or postal address, including Suburb/City/Town and State <i>7th FLOOR, 464 ST. KILDA RD MELBOURNE</i>		Street or postal address, including Suburb/City/Town and State
Postcode <i>3004</i>		Postcode
Phone (b/h) <i>9829 1111</i>		Phone (b/h)
email (if applicant has an email address) <i>dcurry@vacc.com.au</i>		email (if applicant has an email address)

Name of representative of applicant (eg solicitor or estate agent)
Street or postal address, including Suburb/City/Town and State
Postcode
Phone (b/h)
email (if representative has an email address)

Brief Description of Complaint

If you wish to provide additional documents on this matter, please attach to this form, or separately forward under cover of a letter to the Small Business Commissioner (clearly identifying the matter).

FURTHER to the discussions held on 3/11/04 with Commissioner Brennan and VACC.
Pursuit of the matter of IAG introducing and increased levy for motor vehicle insurance for those consumers who wish to maintain the right to select to repairs of their vehicle.
ACC notification by IAG / NRMA attached.
NOTE: IN Victoria RACV/IAG HAVE appointed approx 130 BR CONTRACTED REPAIRERS. VACC HAS over 700 members in the Body repair industry.

Total monetary claim - \$.....

And/Or other remedy claimed (please specify)
.....
.....
.....

SIGNATURE 

Date..... 4 11 04.....

To **Small Business Commissioner**
55 Collins Street
Melbourne Victoria 3000
DX 210074
Phone: 13 22 15
Fax (03) 9651 9943
Email: sbc@iird.vic.gov.au

55 Collins Street, Melbourne Victoria 3000,
Australia Telephone 13 22 15
GPO Box 4509RR Melbourne 3001 DX 210074
Website www.sbc.vic.gov.au

PAYING FOR FREEDOM OF CHOICE

LAG Insurance intends to include a new provision in Motor Insurance Policies from November 15th 2004. The inclusion will allow the policyholder to have freedom of choice in regards to who will repair their vehicle after an accident.

This freedom of choice will cost the consumer an estimated \$69.30 on top of their normal Comprehensive Insurance policy.

It would appear the idea behind this venture is to achieve something IAG have been working on for several years.

Basically the consumer (who believes they won't have an accident and only take out insurance to be responsible and in case of bad luck) by not taking out the freedom of choice levy will hand over complete control and the right for IAG to do as they wish with the policy holders vehicle.

The majority of the Auto Body Repair Industry in Victoria and NSW have signed IAG's associate smash repair contract, in doing so they have had to invest in online imaging and claims handling systems which was part of the requirements after signing. The repairers were promised that after becoming an ASR repairer the arrangement and new equipment would simplify assessments and generally make it easier to do business with IAG.

The new so called freedom of choice policy (unless the vast majority of IAG clients takes it out) will completely do away with all ASR agreements and the investments made by repairers. As failure by the insured to pay the extra levy on a policy renewal will take anyone other than a preferred IAG repairer out of the equation and do away with the insureds freedom of choice.

This exercise by IAG is nothing more than an effort to take control of vehicles they insure by using smoke and mirrors and relying on motorists gambling on whether or not they will have an accident.

Freedom of choice for the consumer is supposedly a normal and expected part of life in Australia and something the ACCC was commissioned to protect and uphold for both the consumer and business communities alike. And certainly not an issue that can be used by a large company to take control of smaller competitors and the consumer.

The fact that IAG has proposed such a scheme shows contempt for both the Auto Body Industry and consumers alike. Especially at a time when a Government inquiry into the Body Repairer and Insurance industry relationship is currently being held.

In a newspaper article dated 26-10-04 "NRMA listens to car repair industry" the article states that the pay for freedom of choice policy is something the Auto Body Industry has called for. It seems far fetched that anybody in business would ask for something to be implemented which will guarantee to remove at least 50% of their clientele. And put the skids under their business.

If this policy is rubber stamped by the ACCC it will have a catastrophic affect on the Body Repair Industry and open the door for the Insurance industry to put in place other such methods of control.

Repairer Notification



Insurance Australia Group
APN 11 000 011 722
APG License No. 227681
Trading as NRMA Insurance
An IAG Company

Motorist

18/10/04

IAG New Policy Option 'Choice of Repairer'

Date Effective This option is available for the policies described below that have an effective date on or after 15 November 2004.

Introduction	This option can be taken out at new business or renewal by insureds for an additional premium. Insureds who take out this option can choose their own repairer – repairs will still be subject to the IAG Insurer's approval. If an insured does not take out the option and they need to have repairs carried out, the IAG Insurer will select the repairer. Either way, a Lifetime Guarantee on the repairs will be provided on repairs the IAG Insurer authorises.
What is the Choice of Repairer option?	
What policies does this apply to?	The Choice of repairer option will be available for the following types of NRMA Insurance, SGIO and SGIC branded policies: <ul style="list-style-type: none">• Comprehensive Motor Vehicle and Motorcycle Insurance policies• Third Party Fire & Theft Insurance policies The option is not available for RACV and CGU branded policies.
How does this affect me?	There is no change to the way in which we currently conduct our business relationship with you. We will continue to assess and authorise repairs as we currently do when Insureds choose to have their vehicle repaired at your premises.

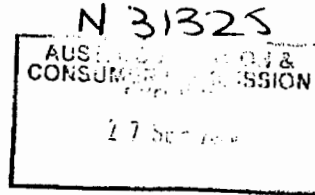
If you have any enquiries please contact your Motor Repair Consultant

BLAKE DAWSON WALDRON

L A W Y E R S

Mr Tim Grimwade
General Manager
Adjudication Branch
ACCC
Level 7
123 Pitt Street
SYDNEY NSW 2000

Dear Mr Grimwade



FILE No:
DOC:
MARS/PRISM:

Form G Notification of Exclusive Dealing Conduct

We enclose a form G Notification of Third Line Forcing Conduct with accompanying submissions on behalf of the following entities in the Insurance Australia Group.

- (a) Insurance Manufacturers of Australia Pty Limited;
- (b) Insurance Australia Limited;
- (c) SGIO Insurance Limited; and
- (d) SGIC General Insurance Limited.

We also enclose a cheque in the amount of \$1,500 comprising filing fees for one Pty Limited company (\$100), one Limited company (\$1,000) and two further Limited companies at the concessional rate of \$200 per company. These amounts were confirmed to us today by the ACCC Infocentre.

If you have any queries, please do not hesitate to contact Ian Wylie on (02) 9258 5971.

Yours faithfully

Blake Dawson Waldron

Level 36
Grosvenor Place
225 George Street
Sydney NSW 2000

www.bdw.com

Tel + 61 2 9258 6000
Fax + 61 2 9258 6999

DX 355 Sydney

Locked Bag N6
Sydney NSW 1225
Australia

Partner
Ian Wylie
Telephone (02) 9258 5971

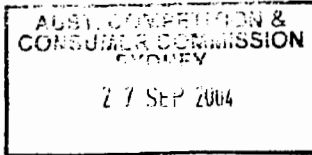
Contact
Rachael Doland
Telephone (02) 9258 6590

Our reference
ISW.RLD.02-1366-1734

27 September 2004

SYDNEY
MELBOURNE
BRISBANE
PERTH
CANBERRA
LONDON
PORT MORESBY
JAKARTA
SHANGHAI

112541042



N31325

FORM G

Regulation 9

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-sections 47(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

1. (a) Name of person giving notice:

Insurance Manufacturers of Australia Pty Limited ABN 93 004 208 084, Insurance Australia Limited ABN 11 000 016 722 (formerly NRMA Insurance Limited), SGIO Insurance Limited ABN 30 058 277 866, and SGIC General Insurance Limited ABN 68 069 065 158 (collectively, the IAG Insurers)

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

General insurance services, including comprehensive motor vehicle and motor cycle insurance, third party property damage insurance for motor vehicles and motor cycles, on-site caravan insurance, touring caravan or trailer insurance, compulsory third party insurance, fleet insurance, transport accident insurance, home buildings insurance, home contents insurance, personal effects insurance, strata titles insurance, and boat insurance.

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

Ian Wylie
Partner
Blake Dawson Waldron
Level 35, Grosvenor Place
225 George Street
Sydney NSW 2000
Ref: ISW.RLD.02-1366-7734

DX 355 Sydney

Facsimile: (02) 9258 6999

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

Please see attached submissions.

2.

(b) Description of the conduct or proposed conduct:

Please see attached submissions.

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

Customers who hold comprehensive motor vehicle insurance with the IAG Insurers.

(b) Number of those persons:

Please see Confidential Annexure D to the attached submissions.

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

N/A

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

Ian Wylie
Partner
Blake Dawson Waldron
Level 35, Grosvenor Place
225 George Street
Sydney NSW 2000
Ref: ISW.RLD.02-1366-1734

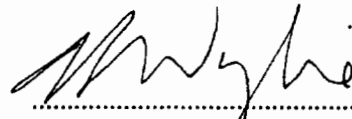
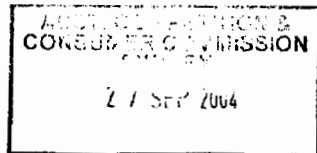
DX 355 Sydney

Telephone: (02) 9258 6000
Facsimile: (02) 9258 6999

Dated: 27 September 2004

Signed on behalf of the person giving this notice

N 31325.



Ian Stuart Wylie
Partner, Blake Dawson Waldron

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.

SUBMISSIONS IN SUPPORT OF NOTIFICATION OF EXCLUSIVE DEALING

LODGED ON BEHALF OF THE IAG INSURERS

1. NOTIFICATION

- 1.1 These submissions are provided to the Australian Competition and Consumer Commission (**Commission**) in support of notifications of exclusive dealing lodged by the IAG Insurers (as defined in paragraph 3.1 below).

2. CONFIDENTIALITY

- 2.1 The estimated market shares in Confidential Annexure A are confidential and commercially sensitive. The IAG Insurers request that the Commission treat the information in Annexure A as confidential and that it be excluded from the public register on confidentiality grounds.
- 2.2 The NRMA Insurance Product Disclosure Statement and Policy wording booklet which is Confidential Annexure B will not be publicly available to customers until after 10 October 2004. The IAG Insurers request that the Commission treat the information as confidential and that it be excluded from the public register on confidentiality grounds until 10 October 2004.
- 2.3 The details of the number of PSRs and ASRs by State in Confidential Annexure C are confidential and commercially sensitive. The IAG Insurers request that the Commission treat the information in Annexure C as confidential and that it be excluded from the public register on confidentiality grounds.
- 2.4 The current number of comprehensive motor vehicle insurance policies in force for each of the IAG Insurers (defined in paragraph 3.1 below) in Confidential Annexure D is confidential and commercially sensitive. The IAG Insurers request that the Commission treat the information in Annexure D as confidential and that it be excluded from the public register on confidentiality grounds.

3. BACKGROUND

- 3.1 Insurance Manufacturers of Australia Pty Limited ABN 93 004 208 084 (**IMA**), Insurance Australia Limited ABN 11 000 016 722 (formerly NRMA Insurance Limited) (**NRMA Insurance**), SGIO Insurance Limited ABN 30 058 277 866 and SGIC General Insurance Limited ABN 68 069 065 158, (collectively, the **IAG Insurers**) are members of the Insurance Australia Group Limited group of companies (**IAG Group**).
- 3.2 As a part of its business operations, each of the IAG Insurers issues motor vehicle comprehensive insurance policies. Confidential Annexure A sets out the estimated share of comprehensive motor vehicle policies issued each year in each State represented by the IAG Insurers.
- 3.3 The IAG Insurers (other than IMA) have appointed IMA to provide them with management services with respect to claims and assessing under their insurance policies. Management services with respect to claims and assessing include providing claim lodgement services, assessing whether the policyholder is entitled to make a claim under

the policy and, if yes, settling the claim by repairing or replacing the vehicle or making a payment to the policyholder in accordance with the terms of the policy.

- 3.4 Under the current terms of the insurance policies issued by the IAG Insurers, where an insured vehicle is damaged and the policyholder is entitled to and does make a claim, the IAG Insurer will be liable to:
- repair the vehicle at its expense; or
 - indemnify the policyholder for the fair and reasonable cost of repairing the vehicle; or
 - if the vehicle is unable to be repaired, or the cost of repair exceeds the agreed/market value of the vehicle specified in the policy, replace the vehicle or pay the policyholder the agreed/market value of the vehicle.
- 3.5 The IAG Insurers maintain a network of repairers who have been appointed to undertake smash repair work for the IAG Insurers. Repairers may be appointed as either a Preferred Smash Repairer (PSR) or an Associate Smash Repairer (ASR). The IAG Insurers will give preference to PSRs over ASRs in the allocation of work, but, with respect to the matters relevant to this notice, the two categories of repairers are otherwise identical.
- 3.6 The IAG Insurers select repairers to offer to appoint as PSRs and ASRs on the following criteria:
- quality of repair work;
 - cost competitiveness;
 - customer service; and
 - the business needs of the IAG Insurers.
- 3.7 Under the current terms of the comprehensive motor vehicle policies issued by the IAG Insurers, where customers do not request a particular repairer, the IAG Insurers recommend to policyholders that repairs be carried out by a PSR or ASR. Where repairs are carried out by a PSR or ASR, the IAG Insurer engages the repairer to undertake the repairs for it, and then provides the insured with a repaired vehicle. If the policyholder chooses to have his, her or its vehicle repaired by a repairer other than a PSR or ASR, the IAG Insurer pays the policyholder an amount for the fair and reasonable cost of repairing the vehicle. It is the responsibility of the policyholder in this case to organise and authorise the repair of the vehicle.

4. NOTIFIED CONDUCT

- 4.1 Each of the IAG Insurers proposes now or in the future to issue a new version of the comprehensive motor vehicle insurance policy. Each of the IAG Insurers proposes now or in the future to issue a new standard form policy (**Standard Policy**). Some of the features of the Standard Policy are described more fully below. Very briefly, however, under a Standard Policy the IAG Insurer, and not the policyholder, will be responsible for choosing and engaging a repairer when the vehicle is repaired under the policy. At the time of taking out the policy, however, the policyholder will have the option of paying an

extra premium to have the right to select a repairer in the event the vehicle is repaired under the policy. In these submissions, a policy under which the policyholder has elected to take this option is referred to as a **Choice of Repairer Policy**. Except for the differences described below, the Standard Policy and the Choice of Repairer Policy are relevantly identical.

- 4.2 Confidential Annexure B is a copy of the Product Disclosure Statement and Policy Wording booklet for the new comprehensive motor vehicle insurance policy to be issued by NRMA Insurance. The terms of the policies to be issued by the other IAG Insurers are relevantly identical.

Standard Policy

- 4.3 Under the terms of the Standard Policy, when a claim is made and the IAG Insurer decides to have the vehicle repaired, the insured will not have a right to nominate the repairer to undertake the repairs. Instead, which repairer will repair the vehicle will be at the sole discretion of the IAG Insurer. The IAG Insurers propose to select a repairer in these circumstances from the pool of PSRs and (if no suitable PSR is available) ASRs. In WA, SA & QLD Metropolitan Areas, this may involve the insured attending a Repair Management Centre. Once the IAG Insurer has determined the repairer to repair the vehicle, the IAG Insurer will organise for the vehicle to be towed to the repairer or ask the insured to deliver the vehicle to the repairer, as appropriate. The IAG Insurer will ask the repairer to provide the IAG Insurer with a quote for the repair of the vehicle. Once the IAG Insurer and the repairer have agreed on the amount of the quote, the IAG Insurer will engage the repairer to repair the vehicle. The IAG Insurer will pay the repairer directly for the repair work. If IAG does not authorise the repairs it may cash settle with the insured for the reasonable cost of repair or replacement of the vehicle.

Choice of Repairer Policy

- 4.4 Under the terms of the Choice of Repairer Policy, the insured, and not the IAG Insurer, selects the repairer to undertake repairs to the vehicle. When a claim is made and the IAG Insurer decides to have the vehicle repaired, the IAG Insurer will ask the insured to nominate the repairer to undertake the repairs. The IAG Insurer will not recommend or suggest a repairer unless the insured requests the assistance of the IAG Insurer in nominating a repairer. The insured may select any properly qualified and licensed smash repairer within a reasonable distance of the location of the vehicle to undertake the repair work, whether or not that repairer is a PSR or ASR.
- 4.5 Once the insured has selected a repairer, the IAG Insurer will organise for the vehicle to be towed to the repairer or ask the insured to deliver the vehicle to the repairer, as appropriate. The IAG Insurer will then ask the repairer to provide the IAG Insurer with a quote for the repair of the vehicle. Once the IAG Insurer and the repairer have agreed on the amount of the quote, the IAG Insurer will engage the repairer to repair the vehicle. The IAG Insurer will pay the repairer directly for the repair work. If IAG does not authorise or cannot agree the quote it will cash settle with the insured for the reasonable cost of repair or replacement of the vehicle or use one of the other cash settlement options for the relevant incident as described in pages 6 to 15 of the Product Disclosure Statement.
- 4.6 An insured will be able to take out a Choice of Repairer Policy by agreeing, at the time of entering the insurance contract, to pay an additional amount of premium over the base premium applicable to the Standard Policy. The reason for the extra premium is to offset

the additional cost to the IAG Insurers of providing the policyholder with a choice of repairer (see further paragraph [5.7]). It is the intention of the IAG Insurers to set the amount of the extra premium to reflect costs and risk so that, from a profitability perspective, the IAG Insurers are indifferent as to whether an insured takes out a Standard Policy or Choice of Repairer Policy.

- 4.7 Apart from the additional premium, there will be no other expense to insureds as a result of taking out the Choice of Repairer Policy rather than the Standard Policy. For example, there will be no differential treatment of insureds under the Standard and Choice of Repairer Policies with respect to excesses or no claim discounts.

Third line forcing

- 4.8 It is the view of the IAG Insurers that the notified conduct described above does not constitute conduct within the meaning of sections 47(6) or 47(7) of the *Trade Practices Act 1974* (Cth) (TPA). This is because (amongst other things) where, under the Standard Policy, a PSR or ASR repairs the vehicle, the services of the PSR or ASR are acquired by the IAG Insurer, not the policyholder. The PSR or ASR undertakes the repair work for the IAG Insurer; the IAG Insurer is liable to the PSR or ASR for the cost of the repairs. The policyholder in turn acquires a repaired vehicle from the IAG Insurer. It is the view of the IAG Insurers that the IAG Insurers are not providing any good or service, or offering any discount, allowance, rebate or credit in relation to the supply or proposed supply of any goods or services, on condition that the policyholder also acquires goods or services from a repairer. Instead, the policyholder acquires goods and services only from the IAG Insurer.
- 4.9 Notwithstanding the view of the IAG Insurers outlined in the previous paragraph, the IAG Insurers lodge these notifications for the avoidance of doubt.

5. PUBLIC BENEFITS OF THE PROPOSED CONDUCT

- 5.1 The proposed conduct is likely to enhance efficiency and consumer choice in the motor vehicle insurance and smash repair markets. The IAG Insurers refer to the following extract from an ACCC Issues Paper¹ which notes that Repairer Groups have been calling for a two tier pricing system (to which the Choice of Repairer policy option responds):

"Repairer groups have called for consideration of a two tier pricing system. This price system will offer consumers the choice of paying two separate prices for motor vehicle insurance. One price will enable the consumer to choose any repairer to perform insurance related repairs to the vehicle. The other price will enable the consumer to go through the insurers normal method which may or may not include a preferred repairer scheme. Insurers believe that if this system were to be introduced then the policy which enables full choice will be more expensive."

- 5.2 Most policyholders, in contrast to the IAG Insurers, are not regular consumers of smash repair services. They are, therefore, generally not well-informed consumers of smash repair services. Given the cost of acquiring information, as infrequent consumers there is unlikely to be an incentive for policyholders to become well-informed. In particular, as

¹ Discussion on the relationship between the Australian motor body/smash repair industry and the general insurance sector, Issues Paper, September 2003, Australian Competition & Consumer Commission at p17.

under a policy of insurance the cost of the repair will be borne by the insurer and not the policyholder, there is little incentive for the policyholder to take any steps to minimise the cost of repair. As a result, where the insured has the choice of repairer, the average cost of repair is likely to be above the competitive level. Higher repair costs, all else equal, will in turn result in higher insurance premiums.

- 5.3 More generally, the asymmetry of information between the policyholders as consumers and the suppliers is likely to cause market inefficiencies. It allows inefficient suppliers, who would exit the market or take steps to become more efficient but for the information asymmetry, to remain in the market. This has implications for both the productive and allocative efficiency of the smash repair market.
- 5.4 The Standard Policy allows policyholders to take advantage of the IAG Insurers' market knowledge and scale efficiencies. Policyholders get the benefit both in the quality of repair and customer service received, and in the form of premiums being lower than they otherwise would be (see further paragraph [5.10]).
- 5.5 The IAG Insurers are frequent and comparatively well-informed purchasers of smash repair services. The motivation of the IAG Insurers in establishing the PSR and ASR programs was to realise improvements in customer service and repair quality and reduce average repair costs by using their knowledge of the smash repair market to identify those repairers who performed high quality work at a competitive cost, and then deal primarily with those repairers.
- 5.6 The experience of the IAG Insurers is that the average cost of repairs undertaken by PSRs is lower than the average cost of repairs undertaken by other repairers.
- 5.7 However, the IAG Insurers recognise that some policyholders place significant value on the right to choose which repairer will undertake repairs to their vehicle. Giving this right to policyholders creates additional costs for the IAG Insurers. These costs include:
- (a) higher average repair costs – as discussed at paragraphs [5.2 and 5.6], the average cost of repairs undertaken by non-PSR repairers exceeds the average for PSRs;
 - (b) increased operational costs (including towing costs) associated with the IAG Insurers having to deal with a larger number of repairers, some of whom the IAG Insurers deal with only occasionally.
- 5.8 Under the current system, these costs are borne equally by all policyholders, whether or not they value the right to choose a repairer. Policyholders who actively wish to select a repairer do not pay any added premium or higher excess. In short, policyholders who, if given a choice would not pay to have a right to select a repairer (because the value to them of such a right is less than its true cost) are cross-subsidising those policyholders for whom the value of the choice is greater than or equal to its true cost.
- 5.9 A significant advantage of the new policy is that it removes the cross-subsidy referred to in the preceding paragraph and allocates the cost of having a choice of repairer to those policyholders who value the right to have such choice at or above its cost.

Cost savings passed on to policyholders

- 5.10 The IAG Insurers face significant competition in the market to supply motor vehicle insurance. The IAG Insurers regard the market for motor vehicle insurance to be a

national market, as evidenced by most of the insurance groups having a presence in more than one State. Even if the view is taken that there is a separate market in each State and Territory, Confidential Annexure A demonstrates that the IAG Insurers face significant competition in each market.² A consequence of the competition faced by the IAG Insurers is that lower repair and other claim costs result in premiums being lower than they would be in the presence of higher repair and other claim costs.

6. EFFECT OF THE NOTIFIED CONDUCT ON COMPETITION

6.1 The IAG Insurers submit that the notified conduct will not have any detrimental effect on competition in any market. The IAG Insurers make this submission for at least the following reasons.

- (a) Policyholders who value a right of choice of repairer will be able to obtain such a right when taking out the policy by paying an extra premium amount, in circumstances where the extra premium is calculated to cover the additional costs associated with policyholder repairer choice.
- (b) The IAG Insurers do not prevent PSRs or ASRs from working for other insurance companies or individual customers. Also, a PSR or ASR may terminate its PSR or ASR Agreement without reason on 7 days' notice. Therefore, the notified conduct does not prevent other purchasers of smash repair services from obtaining access to the PSRs and ASRs.
- (c) There are a significant number of PSRs and ASRs within the IAG Insurer repairer network. Confidential Annexure C lists the current number of PSRs and ASRs in each State.
- (d) A repairer, once appointed as a PSR or ASR, is not guaranteed to retain that status. PSR and ASR agreements generally have a duration of one year only, and the IAG Insurers assess each year whether or not to offer a PSR or ASR a new contract on the expiry of the existing contract. Specifically:
 - (i) the IAG Insurers actively monitor the quality, cost competitiveness and customer service of repair work undertaken for them by PSRs and ASRs. The IAG Insurers may terminate a PSR or ASR agreement on 90 or 30 days' notice respectively, or on shorter notice if the repairer has breached certain clauses of the agreement or has failed to maintain the requisite standards of repair quality, cost competitiveness and customer service;
 - (ii) the IAG Insurers are free at any time to appoint further PSRs or ASRs in any area where the business need arises. Repairers that are not currently part of the PSR program always have the opportunity of being appointed as a PSR or ASR by demonstrating to the IAG Insurers that they are able to provide smash repair services of the requisite quality at a competitive cost.

A PSR or ASR is, therefore, still subject to competitive forces to retain its status.

² The Commission has previously stated that it regards the market for domestic vehicle insurance to be competitive; see the Commission's *Insurance Industry Market Pricing Review* (March 2002) and ACCC media release "ACCC not to oppose IAG acquisition of Aviva's CGU Insurance", 28 November 2002.

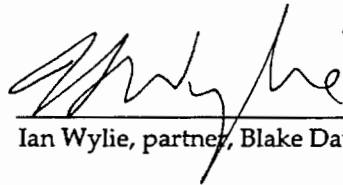
- (e) The conduct will only apply in relation to smash repairs effected under policies issued by the IAG Insurers. Confidential Annexure D sets out the current number of comprehensive motor vehicle insurance policies in force for the IAG Insurers.
- (f) Policies last only one year and a policyholder may easily switch to other insurers at the expiration of this period. Alternatively they may cancel their policy at any time entitling them to a refund less any cancellation fee.

7. CONCLUSION

- 7.1 The IAG Insurers submit that the notified conduct does not involve any anti-competitive detriment. In any event for the reasons outlined above any perceived detriment will be substantially outweighed by the likely benefit to the public from the notified conduct. The IAG Insurers accordingly submit that the notified conduct satisfies the requirements of section 93 of the TPA and that the notifications should be allowed to stand.

DATE: 27 September 2004

SIGNED on behalf of the IAG Insurers:



Ian Wylie, partner, Blake Dawson Waldron