

MONAHAN + ROWELL

LAWYERS

2 November 2005

FILE No:
DOC:
MARS/PRISM:

The Adjudication Branch
Australian Competition and Consumer Commission
P.O. Box 1199
DICKSON ACT 2602

Dear Sirs,

RE: EXCLUSIVE DEALING NOTIFICATION – GUILD INSURANCE LTD

Our Ref: pjr/50337

Your Ref: Adjudications Branch

We act on behalf of Guild Insurance Limited (“Guild”).

Our client hereby makes **4 separate notifications** pursuant to Section 93(1) of the *Trade Practices Act 1974*. Each notification details a proposed arrangement in which Guild will determine general insurance premiums to be offered to members of each association listed below, by reference to the risk profile of the members of the associations, as evidenced by the claims experienced by the membership and by the risk management strategies of each association, with the result that different premiums may be offered to members and non- members of each association.

We **enclose**, Form G, written submission and payment of the notification fees in respect of:

1. The Australian Dental Prosthetists and Dental Technicians (Tasmania) Association,
2. The Australian Dental Technicians Association South Australia,
3. The Australian Dental Technicians & Dental Prosthetists Society (Western Australia),
4. Dental Prosthetists Association of the ACT Incorporated.



In association with Colin Biggers & Paisley - Sydney

50358/cw/363973/1

Partners Patrick Monahan + Philip Rowell + Robert Tuck + Bruce Butler + Mark Attard + Simon O’Hanlon
Andrew Probert + Melissa Gojak + Allison Grice + Mark White

Address Level 31, Rialto South Tower, 525 Collins Street, Melbourne VIC 3000 Australia **Postal** GPO Box 4542 Melbourne VIC 3001
Telephone Ph (61-3) 8624 2000 Fax (61-3) 8624 2031 **Website** www.mrlaw.com.au
Ausdoc DX 640 Melbourne **ABN** 27 698 119 366

Founding Partner K Clive Brookes

We confirm that we have **enclosed** a cheque for \$1,600 which represents \$1,000 for the first notification and \$200 each for the remaining four notifications.

Would you kindly confirm receipt in due course and advise your Reference.

Should you have any queries in respect of these notifications, please contact Andrew Seiter of our office.

Yours faithfully,

MONAHAN + ROWELL

Enc.

Partner
Phone: (61-3) 8624 2002
Email: prowell@mrlaw.com.au

**Contact
Lawyer**
Phone:
Email:

Andrew Seiter
(61-3) 8624 2080
aseiter@mrlaw.com.au

FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

TRADE PRACTICES ACT 1974 – subsection 93(1)

EXCLUSIVE DEALING: APPLICATION FOR AUTHORIZATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in subsection 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.

1. (a) Name of person giving notice:

Guild Insurance Limited (ABN 55 004 538 863) (“Guild”).
- (b) Short description of business carried on by that person:

General Insurer.
- (c) Address in Australia for service of documents on that person:

40 Burwood Road
Hawthorn, Vic. 3122.
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Supply of general insurance services.
- (b) Description of the conduct or proposed conduct:

Guild wishes to be able to determine general insurance premiums to be offered to members of the Australian Dental Prosthetists and Dental Technicians Society (Tasmania) Incorporated (“the association”) by reference to the risk profile of the members of the association, as evidenced by the claims experience of the membership and by the risk management strategies of the association, with the result that different premiums may be offered to members and non-members of the association reflecting the potentially different risk being underwritten.

**SUBMISSION BY GUILD INSURANCE LIMITED
IN SUPPORT OF A NOTIFICATION UNDER
SECTION 93(1) OF THE TRADE PRACTICES ACT 1974**

1. BACKGROUND

- 1.1 Guild Insurance Limited (“Guild”) is a general insurer licensed under the Insurance Act 1973.
- 1.2 The Australian Dental Prosthetists and Dental Technicians Society Association (Tasmania) Incorporated (“the Association”) is a professional association of dental prosthetists and technicians in Tasmania. This is a professional organisation which aims to serve the public and advance the dental profession through education, advocacy and member services. The Association also acts on behalf of its members by communicating with Government and other statutory bodies regarding professional and legislative issues.
- 1.3 One of the major benefits to dental prosthetists and technicians of membership of the Association is access to professional indemnity insurance negotiated by the Association on behalf of its members at premiums more beneficial to the insured than is likely to be obtained by each dental prosthetist/technician if they negotiated their own professional indemnity insurance.
- 1.4 By way of membership of the Association, dental prosthetists and technicians have greatly enhanced access to information and advice about matters relevant to professional risk management, including:
- A newsletter produced annually is provided to Association members to inform them of any developments and/or advancements within the profession and increase awareness of professional risks and new advances in the knowledge and practice of dental prosthetics.

- The Association fosters and provides continuing professional education by organising State based seminars on topics such as Infection Control, Implant Technology, G.S.T compliance, First Aid and Legal Responsibilities. The Association was also involved in the “Second World Symposium for the International Federation of Denturists 2001” which was hosted in Tasmania.
- The Association provides its members with a “Code of Practice for Dental Prosthetists” that outlines core rules of conduct in order to ensure public confidence in the profession of dental prosthetics. Acceptance of the Code of Practice is a condition of membership of the Association.

- 1.5 The Association provides a single contact point through which Guild is able to communicate to the majority of dental prosthetists and technicians in Tasmania regarding professional indemnity issues and to assist with the Association’s own professional risk education and management programs and strategies
- 1.6 The Association provides a mechanism for resolution of disputes of a non ethical nature, by way of a “Professional Standards Committee” which allows complaints about the professional conduct of dental prosthetists/technicians to be received and handled and potentially resolved before they even become claims. Even if subsequent professional indemnity claims arise from such complaints, the professional evaluation and notification of such claims promptly ensures that claims that need to be settled are identified and settled early and at minimal expense and that claims that ought be defended are promptly identified and sound expert advice and evidence required for such defence is prepared from the outset.
- 1.7 Because of the capacity of the Association (and therefore Guild) to provide ongoing information and education to its members about developments in dental prosthetic knowledge and practice and risk management issues, an initial “*complaints handling*” service and a

range of education services, Guild recognises that Association members are perceived to have a safer "*risk profile*" than non-members in that the risk of a successful claim being made against a dental prosthetist/technician arising out of professional negligence is reduced by virtue of their membership of the Association.

- 1.8 As Guild is able to negotiate professional indemnity insurance terms and premiums with a large body of dental prosthetists/technicians through the Association there is a "*pooling*" of the individual risks of that body of dental prosthetists/technicians. This "*dilution*" or "*averaging*" of individual dental prosthetists/technicians risks in the greater "*pool*" is recognised by underwriters when calculating the cost of the insurance for that pool of risks which calculation in turn forms the basis for Guild's calculation of premiums.

2. MARKET

- 2.1 The market in which the conduct relates is the market for general insurance in Australia and, in particular, the market for professional indemnity insurance.

3. ANALYSIS OF THE CONDUCT

- 3.1 If the conduct described in Form G is exclusive dealing within section 47(6) or 47(7) of the Trade Practices Act, which Guild does not admit, Guild submits that the likely benefit to the public from the conduct far outweighs any likely detriment, if any.
- 3.2 The prime likely benefit to the public is the likely improvement in the professional standards of dental prosthetists/technicians in Tasmania as a result of the access to the risk management information and advice referred to in paragraph 1.4 above.
- 3.3 Additional likely benefits to the public include:

- (a) reduction in cost pressures on dental prosthetists/technicians to increase fees for clients due to their access to professional indemnity insurance negotiated by the Association on behalf of its members at premiums more beneficial than could be obtained individually in the market; and
- (b) the increased chance of future premiums at more beneficial rates being available for dental prosthetists/technicians due to the “pooling” of the individual risks of a large body of dental prosthetists/technicians through the Association.

- 3.4 Guild submits that the conduct will have no detrimental effect on competition in the general insurance market and, to the contrary, will enhance competition.
- 3.5 Dental prosthetists/technicians seeking insurance in the market have access to many insurers which compete vigorously for the provision of insurance services. There is no element of compulsion or exclusivity in the conduct. No dental prosthetist/technician is required by Guild to be an Association member, nor is any Association member required to insure with Guild.
- 3.6 The conduct seeks to recognise the underwriting reality that the risk profile of Association members, as evidenced by the claims experience of the membership and the risk management strategies of the Association, may warrant the offering of different premiums to members and non-members of the Association reflecting the potentially different risk being underwritten.
- 3.7 Accordingly, Guild submits that the conduct will have no anti-competitive effect and thus no public detriment and, to the contrary, there are many likely public benefits that will arise from the conduct.

DATED the *2nd* day of *November* 2005



.....
MONAHAN + ROWELL
Solicitors for Guild

Australian Dental Prosthetists Association – Tasmania (INC)

Member of the Association 2004-2005

ADAMS Terry	163 Hobart Road, Kings Meadows 7250 (<i>Committee</i>)
BENNETT Allan	304 Mount Street, Burnie, Tas, 7320
BLAZELY, Greg	421 Invermay Road, Launceston, Tas, 7250
BOXHALL Stephen	98 Elizabeth Street, Hobart, 7000 (<i>Committee</i>)
BROWNLIE Russell	52 Elpin Road, Launceston, 7250 (<i>President</i>)
CLARK Linda (Ms)	PO Box 227, Burnie, 7320
CROSWELL Robert	17 Tolosa Street, Glenorchy, 7010
DALLA Phillip	PO Box 357, Burnie 7320 (<i>Committee</i>)
FERGUSON Andrew	132 Newton Road, Hobart, 7000
GRAHAM Kim	PO Box 569, Burnie, 7320
GREEN Leo	4 Criterion Street, Hobart, 7000
HASSETT Redmond Peter	19 Clarence Street, Bellerive, 7018
HASSETT Stephen	19 Clarence Street, Bellerive, 7018
HOLLINGSWORTH Ian	36 Treloggen Drive, Binalong Bay, Tas, 7215
HOUSE Paul	335 Westbury Road, Prospect 7250
LITTLE Peter	PO Box 147, Ulverstone, 7315
LONG Glenn	4 Baronia Street, Howrah, 7018
METZLER Rudi	4 Mathers Lane, Hobart, 7000
MILLER Glenn	PO Box 116 Battery Point, Tas, 7004
MITCHELL Craig	96 Tamar Street, Launceston 7250
NOSSITER Robin	2 Davey Crt New Norfolk 7140
NYHUIS Frank Gerard	4 Cassia Place, Kingston, Tas 7050

O'NELL	50 Gronigon Raod, Kingston 7050 (<i>Committee</i>)
PAYTON-VON Rotz Gabriela	82 Arthur Street, West Hobart, 7000
PEACOCK Nikolas	98 Elizabeth Street, Hobart, 7000 (<i>Committee</i>)
POXON Angus	52 York Street, Launceston 7250
SAUNDERS Gary	39a Brisbane Street, Launceston 7250
SAUNDERS Jenny Mrs	39a Brisbane Street, Launceston 7250
SCULL Jane Annette (M's)	R.A. 227 Valley Road, SIDMOUTH, Tas, 7270
SKEGGS Peter	1 Ninabah Street, Howrah 7018
SMITH Carolynne Ms	410 Main Raod, Glenorchy, 7010 (<i>Committee</i>)
STEVENS Philip	PO Box 7530, Launceston, Tas, 7250
STOUE Leif	6 Weston Place, Glenorchy, Tas, 7010
WARMAN Mark	PO Box 1177, Devonport, 7310 (<i>Committee</i>)
WATERSON-ROUGHAN Jayne	7 Perry Court, Lewisham, Tas, 7173
WILLIAMS Rodney	118 Main Road, Moonah, 7009
ZAK Nikolaus	4 Mathers Lane, Hobart 7000 (<i>Committee</i>)

FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

TRADE PRACTICES ACT 1974 – subsection 93(1)

EXCLUSIVE DEALING: APPLICATION FOR AUTHORIZATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in subsection 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.


- 1. (a) Name of person giving notice:
Guild Insurance Limited (ABN 55 004 538 863) (“Guild”).
- (b) Short description of business carried on by that person:
General Insurer.
- (c) Address in Australia for service of documents on that person:
40 Burwood Road
Hawthorn, Vic. 3122.
- 2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
Supply of general insurance services.
- (b) Description of the conduct or proposed conduct:
Guild wishes to be able to determine general insurance premiums to be offered to members of the Australian Dental Technicians Association South Australia Incorporated (“the association”) by reference to the risk profile of the members of the association, as evidenced by the claims experience of the membership and by the risk management strategies of the association, with the result that different premiums may be offered to members and non-members of the association reflecting the potentially different risk being underwritten.

3. (a) Class or classes of persons to which the conduct relates:
Dental Technicians, whether members or non-members of the association.
- (b) Number of those persons:
(i) At present time:
125
(ii) Estimated within the next year:
125
- (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:
Not applicable.
- (d) Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Philip Rowell
Partner
Monahan + Rowell
Level 31
525 Collins Street
Melbourne Vic 3000

DATED the *2nd* of *November* 2005

Signed by/on behalf of the applicant


.....
Signature

Philip John Rowell
Full Name

Solicitor for Guild Insurance Ltd.
Description

**SUBMISSION BY GUILD INSURANCE LIMITED
IN SUPPORT OF A NOTIFICATION UNDER
SECTION 93(1) OF THE TRADE PRACTICES ACT 1974**

1. BACKGROUND

- 1.1 Guild Insurance Limited ("Guild") is a general insurer licensed under the Insurance Act 1973.
- 1.2 The Australian Dental Technicians Association South Australia Incorporated ("the Association") is a professional association of dental technicians in South Australia that was formed in 1998. The Association was developed to provide continuing education and general communication between dental technicians. It also acts on behalf of its members by liaising with Government and other statutory bodies regarding professional, educational and legislative issues.
- 1.3 One of the major benefits to dental technicians of membership of the Association is access to professional indemnity insurance negotiated by the Association on behalf of its members at premiums more beneficial to the insured than is likely to be obtained by each dental technician if they negotiated their own professional indemnity insurance.
- 1.4 By way of membership of the Association, dental technicians have greatly enhanced access to information and advice about matters relevant to professional risk management, including:
 - The Association fosters open communication with the major Dental Supply Companies so that members are advised of any new releases of products and the best practices and methods with the use of new products.
 - The Association holds educational lectures for members to advise them of new materials/products that are available on the

market, and also to advise them about new methods/techniques that are relevant to them including risk management procedures.

- Social gatherings are arranged between other Dental Technicians and also Dental Supply Companies in order to facilitate communication within the industry and to foster professional relationships.

- 1.5 The Association provides a single contact point through which Guild is able to communicate to the majority of dental technicians in South Australia regarding professional indemnity issues and to assist with the Association's own professional risk education and management programs and strategies
- 1.6 Because of the capacity of the Association (and therefore Guild) to provide ongoing information and education to its members about developments in dental technician knowledge and practice and risk management issues, and a range of education services, Guild recognises that Association members are perceived to have a safer "*risk profile*" than non-members in that the risk of a successful claim being made against a dental technician arising out of professional negligence is reduced by virtue of their membership of the Association.
- 1.7 As Guild is able to negotiate professional indemnity insurance terms and premiums with a large body of dental technicians through the Association there is a "*pooling*" of the individual risks of that body of dental technicians. This "*dilution*" or "*averaging*" of individual dental technicians risks in the greater "*pool*" is recognised by underwriters when calculating the cost of the insurance for that pool of risks which calculation in turn forms the basis for Guild's calculation of premiums.

2. **MARKET**

2.1 The market in which the conduct relates is the market for general insurance in Australia and, in particular, the market for professional indemnity insurance.

3. **ANALYSIS OF THE CONDUCT**

3.1 If the conduct described in Form G is exclusive dealing within section 47(6) or 47(7) of the Trade Practices Act, which Guild does not admit, Guild submits that the likely benefit to the public from the conduct far outweighs any likely detriment, if any.

3.2 The prime likely benefit to the public is the likely improvement in the professional standards of dental technicians in South Australia as a result of the access to the risk management information and advice referred to in paragraph 1.4 above.

3.3 Additional likely benefits to the public include:

(a) reduction in cost pressures on dental technicians to increase fees due to their access to professional indemnity insurance negotiated by the Association on behalf of its members at premiums more beneficial than could be obtained individually in the market; and

(b) the increased chance of future premiums at more beneficial rates being available for dental technicians due to the "pooling" of the individual risks of a large body of dental technicians through the Association.

3.4 Guild submits that the conduct will have no detrimental effect on competition in the general insurance market and, to the contrary, will enhance competition.

3.5 Dental technicians seeking insurance in the market have access to many insurers which compete vigorously for the provision of insurance

FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA
TRADE PRACTICES ACT 1974 – subsection 93(1)

EXCLUSIVE DEALING: APPLICATION FOR AUTHORIZATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in subsection 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.

1. (a) Name of person giving notice:
Guild Insurance Limited (ABN 55 004 538 863) ("Guild").
- (b) Short description of business carried on by that person:
General Insurer.
- (c) Address in Australia for service of documents on that person:
40 Burwood Road
Hawthorn, Vic. 3122.
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
Supply of general insurance services.
- (b) Description of the conduct or proposed conduct:
Guild wishes to be able to determine general insurance premiums to be offered to members of the Australian Dental Technicians and Dental Prosthetists Society (Western Australia) Incorporated ("the association") by reference to the risk profile of the members of the association, as evidenced by the claims experience of the membership and by the risk management strategies of the association, with the result that different premiums may be offered to members and non-

members of the association reflecting the potentially different risk being underwritten.

3. (a) Class or classes of persons to which the conduct relates:
Dental Technicians and Prosthetists, whether members or non-members of the association.
- (b) Number of those persons:
(i) At present time:
60
(ii) Estimated within the next year:
60
- (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:
Not applicable.
- (d) Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Philip Rowell
Partner
Monahan + Rowell
Level 31
525 Collins Street
Melbourne Vic 3000

DATED the *2nd* of *November* 2005

Signed by/on behalf of the applicant


.....
Signature

Philip John Rowell
Full Name

Solicitor for Guild Insurance Ltd.
Description

**SUBMISSION BY GUILD INSURANCE LIMITED
IN SUPPORT OF A NOTIFICATION UNDER
SECTION 9B(1) OF THE TRADE PRACTICES ACT 1974**

1. BACKGROUND

- 1.1 Guild Insurance Limited (“Guild”) is a general insurer licensed under the Insurance Act 1973.
- 1.2 The Australian Dental Technicians and Dental Prosthetists Society (Western Australia branch) Incorporated (“the Association”) is a professional association of dental technicians and prosthetists in Western Australia. This Association was previously known as the “Dental Technicians Society”. The members of this Association specialize in denture construction, alteration and repair. The Association aims to provide services to its members to enable them to deliver the highest standard of treatment and care. It also acts on behalf of its members by liaising with Government and other statutory bodies regarding professional, educational and legislative issues.
- 1.3 One of the primary benefits to dental technicians and prosthetists of membership of the Association is access to professional indemnity insurance negotiated by the Association on behalf of its members at premiums more beneficial to the insured than is likely to be obtained by each dental technician/prosthetist if they negotiated their own professional indemnity insurance.
- 1.4 As part of their membership with the Association, dental technicians and prosthetists have greatly enhanced access to information and advice about matters relevant to professional risk management, including:
- Various newsletters/publications are provided to members to advise them of any developments within the profession and

increase awareness of professional risks and new advances in the knowledge and practice of dental prosthetics.

- Continuing education is encouraged by the Association as seminars and programs are held in order to educate members about new products in the industry and also to raise understanding of risk management procedures.
- Members of the Association are provided with access to a website which has a “members-only” section which provides members with a platform in which to communicate with other members and exchange information and ideas.
- Members of the Association abide by a Code of Ethics which outlines a guide for ethical behaviour and professional conduct of dental prosthetics and technicians.

1.5 The Association provides a single contact point through which Guild is able to communicate to the majority of dental prosthetists/technicians in Western Australia regarding professional indemnity issues and to assist with the Association’s own professional risk education and management programs and strategies.

1.6 The Association provides a mechanism for resolution of disputes of a non ethical nature, by way of a “complaint handling committee” which allows complaints about the professional conduct of dental prosthetists/technicians to be received and handled and potentially resolved before they even become claims. Even if subsequent professional indemnity claims arise from such complaints, the professional evaluation and notification of such claims promptly ensures that claims that need to be settled are identified and settled early and at minimal expense and that claims that ought be defended are promptly identified and sound expert advice and evidence required for such defence is prepared from the outset.

1.7 Because of the capacity of the Association (and therefore Guild) to provide ongoing information and education to its members about developments in dental knowledge and practice and risk management

issues, an initial “*complaints handling*” service and a range of education services, Guild recognises that Association members are perceived to have a safer “*risk profile*” than non-members in that the risk of a successful claim being made against a dental prosthetist/technician arising out of professional negligence is reduced by virtue of their membership of the Association.

- 1.8 As Guild is able to negotiate professional indemnity insurance terms and premiums with a large body of dental prosthetists/technicians through the Association there is a “*pooling*” of the individual risks of that body of dental prosthetists/technicians. This “*dilution*” or “*averaging*” of individual risks in the greater “*pool*” is recognised by underwriters when calculating the cost of the insurance for that pool of risks which calculation in turn forms the basis for Guild’s calculation of premiums.

2. MARKET

- 2.1 The market in which the conduct relates is the market for general insurance in Australia and, in particular, the market for professional indemnity insurance.

3. ANALYSIS OF THE CONDUCT

- 3.1 If the conduct described in Form G is exclusive dealing within section 47(6) or 47(7) of the Trade Practices Act, which Guild does not admit, Guild submits that the likely benefit to the public from the conduct far outweighs any likely detriment, if any.
- 3.2 The prime likely benefit to the public is the likely improvement in the professional standards of dental prosthetists/technicians in Western Australia as a result of the access to the risk management information and advice referred to in paragraph 1.4 above.
- 3.3 Additional likely benefits to the public include:

- (a) reduction in cost pressures on dental prosthetists/technicians to increase fees for clients due to their access to professional indemnity insurance negotiated by the Association on behalf of its members at premiums more beneficial than could be obtained individually in the market; and
- (b) the increased chance of future premiums at more beneficial rates being available for dental prosthetists/technicians due to the "pooling" of the individual risks of a large body of dental prosthetists/technicians through the Association.

- 3.4 Guild submits that the conduct will have no detrimental effect on competition in the general insurance market and, to the contrary, will enhance competition.
- 3.5 Dental prosthetists/technicians seeking insurance in the market have access to many insurers which compete vigorously for the provision of insurance services. There is no element of compulsion or exclusivity in the conduct. No dental prosthetist/technician is required by Guild to be an Association member, nor is any Association member required to insure with Guild.
- 3.6 The conduct seeks to recognise the underwriting reality that the risk profile of Association members, as evidenced by the claims experience of the membership and the risk management strategies of the Association, may warrant the offering of different premiums to members and non-members of the Association reflecting the potentially different risk being underwritten.
- 3.7 Accordingly, Guild submits that the conduct will have no anti-competitive effect and thus no public detriment and, to the contrary, there are many likely public benefits that will arise from the conduct.

DATED the *2nd* day of *November* 2005



.....
MONAHAN + ROWELL
Solicitors for Guild

FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

TRADE PRACTICES ACT 1974 – subsection 93(1)

EXCLUSIVE DEALING: APPLICATION FOR AUTHORIZATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in subsection 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.

1. (a) Name of person giving notice:
 Guild Insurance Limited (ABN 55 004 538 863) (“Guild”).
- (b) Short description of business carried on by that person:
 General Insurer.
- (c) Address in Australia for service of documents on that person:
 40 Burwood Road
 Hawthorn, Vic. 3122.
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
 Supply of general insurance services.
- (b) Description of the conduct or proposed conduct:
 Guild wishes to be able to determine general insurance premiums to be offered to members of the Dental Prosthetists Association of the ACT Incorporated (“the association”) by reference to the risk profile of the members of the association, as evidenced by the claims experience of the membership and by the risk management strategies of the association, with the result that different premiums may be offered to members and non-members of the association reflecting the potentially different risk being underwritten.

3. (a) Class or classes of persons to which the conduct relates:
Dental Prosthetists, whether members or non-members of the association.
- (b) Number of those persons:
(i) At present time:
9
(ii) Estimated within the next year:
9
- (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:
See list attached.
- (d) Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Philip Rowell
Partner
Monahan - Rowell
Level 31
525 Collins Street
Melbourne Vic 3000

DATED the *2nd* of *November* 2005

Signed by/on behalf of the applicant


.....
Signature

Philip John Rowell
Full Name

Solicitor for Guild Insurance Ltd.
Description

**SUBMISSION BY GUILD INSURANCE LIMITED
IN SUPPORT OF A NOTIFICATION UNDER
SECTION 93(1) OF THE TRADE PRACTICES ACT 1974**

1. BACKGROUND

- 1.1 Guild Insurance Limited (“Guild”) is a general insurer licensed under the Insurance Act 1973.
- 1.2 The Dental Prosthetists Association of the ACT Incorporated (“the Association”) is the professional body representing qualified dental prosthetists in the Australian Capital Territory. The objectives of the Association are to protect the interests of its members, assist with the preservation of ethics in the profession and to foster and assist members in the further study of dental prosthetics. The Association also acts on behalf of its members by liaising with persons, bodies and Government regarding professional, educational and legislative issues.
- 1.3 One of the main benefits to dental prosthetists of membership of the Association is access to professional indemnity insurance negotiated by the Association on behalf of its members at premiums more beneficial to the insured than are likely to be obtained by each dental prosthetist if they negotiated their own professional indemnity insurance.
- 1.4 Through membership of the Association dental prosthetists have greatly enhanced access to information and advice about matters relevant to professional risk management, such as:
 - Members of the Association receive regular informative newsletters and National publications which discuss new advancements in the profession and also raise matters relevant to awareness of professional and risk management issues.

- The Association provides members with access to the Executive Committee of the Association who are available to provide advice on any area of the practice of dental prosthetics as well as access to a national website that provides access to member-only information.
- The Association encourages attendances at seminars and continuing educational presentations such as the annual OSHA and Infection Control seminar relating to developments in the knowledge and practice of dental prosthetics including in relation to risk management issues.
- The Association has a political action committee which liaises with Government and all other statutory bodies regarding professional educational and legislation issues.

1.5 The Association provides a single contact point through which Guild is able to communicate to the majority of dental prosthetists in ACT regarding professional indemnity issues and to assist with the Association's own professional risk education and management programs and strategies.

1.6 The Association provides a forum in which complaints by the public about the professional conduct of dental prosthetists may initially be received and handled and potentially resolved before they even become claims. Complaints from the public are handled through formal procedures put in place by an ethics committee. Even if subsequent professional indemnity claims arise from such complaints, the professional evaluation and notification of such claims promptly ensures that claims that need to be settled are identified and settled early and at least expense and that claims that ought be defended are promptly identified and sound expert advice and evidence required for such defence is prepared from the outset.

1.7 Because of the capacity of the Association (and therefore Guild) to provide ongoing information and education to its members about developments in dental prosthetics knowledge and practice and risk

management issues and an initial “*complaints handling*” service, Guild recognises that Association members are perceived to have a safer “*risk profile*” than non-members in that the risk of a successful claim being made against a dental prosthetist arising out of professional negligence is reduced by virtue of their membership of the Association.

1.8 Because Guild is able to negotiate professional indemnity insurance terms and premiums with a large body of dental prosthetists through the Association there is a “*pooling*” of the individual risks of that body of dental prosthetists. This “*dilution*” or “*averaging*” of individual dental prosthetist risks in the greater “*pool*” is recognised by underwriters when calculating the cost of the insurance for that pool of risks which calculation in turn forms the basis for Guild’s calculation of premiums.

2. MARKET

2.1 The market in which the conduct relates is the market for general insurance in Australia and, in particular, the market for professional indemnity insurance.

3. ANALYSIS OF THE CONDUCT

3.1 If the conduct described in Form G is exclusive dealing within section 47(6) or 47(7) of the Trade Practices Act, which Guild does not admit, Guild submits that the likely benefit to the public from the conduct far outweighs any likely detriment, if any.

3.2 The prime likely benefit to the public is the likely improvement in the professional standards of dental prosthetists in ACT as a result of the access to the risk management information and advice referred to in paragraph 1.4 above.

3.3 Additional likely benefits to the public include:

- (a) reduction in cost pressures on dental prosthetists to increase fees for patients due to their access to professional indemnity insurance negotiated by the Association on behalf of its members at premiums more beneficial than could be obtained individually in the market; and
 - (b) the increased chance of future premiums at more beneficial rates being available for dental prosthetists due to the "pooling" of the individual risks of a large body of dental prosthetists through the Association.
- 3.4 Guild submits that the conduct will have no detrimental effect on competition in the general insurance market and, to the contrary, will enhance competition.
- 3.5 Dental prosthetists seeking insurance in the market have access to many insurers which compete vigorously for the provision of insurance services. There is no element of compulsion or exclusivity in the conduct. No dental prosthetist is required by Guild to be an Association member, nor is any Association member required to insure with Guild.
- 3.6 The conduct seeks to recognise the underwriting reality that the risk profile of Association members, as evidenced by the claims experience of the membership and the risk management strategies of the Association, may warrant the offering of different premiums to members and non-members of the Association reflecting the potentially different risk being underwritten.
- 3.7 Accordingly, Guild submits that the conduct will have no anti-competitive effect and thus no public detriment and, to the contrary, there are many likely public benefits that will arise from the conduct.

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Rowell

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