



**Australian
Competition &
Consumer
Commission**

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Our Ref: A90997 & A90998
Contact Officer: Gavin Jones
Contact Phone: 03 9290 1475

6 January 2006

sent to attached
list 6/1/06
CJ

Dear

**Re: Community Care Underwriting Agency applications for
revocation and substitution A90997 & A90998
- interested party consultation**

The Australian Competition and Consumer Commission (the ACCC) is currently conducting an interested party consultation process in relation to an application for revocation and substitution made by the Community Care Underwriting Agency (CCUA). As a possible interested party you are invited to comment on the issues outlined in this letter.

The CCUA is a joint venture arrangement between Allianz Australia Insurance Limited (Allianz), QBE Insurance (Australia) Limited (QBE) and Insurance Australia Limited (trading as NRMA Insurance) for the collective supply of public liability insurance through a 'co-insurance pool' to eligible not for profit organisations (NFPOs). The ACCC originally authorised the joint venture arrangement on 24 March 2004. This authorisation is due to expire on 31 December 2006.

Background

The ACCC is the Australian Government agency responsible for administering the *Trade Practices Act 1974* (the TPA). A key objective of the TPA is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business resulting in a greater choice for consumers in price, quality and service.

The TPA, however, allows the ACCC to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way businesses may obtain immunity is to apply for what is known as an 'authorisation' from the ACCC. Broadly, the ACCC may 'authorise' businesses to engage in anti-competitive arrangements or conduct where it is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment.



In assessing the public benefits and detriments of an authorisation application, the ACCC undertakes a public consultation process seeking comments on the application from interested parties. Following an initial consultation process, the ACCC will issue a draft decision for comment.

Application for revocation and substitution by CCUA

On 24 March 2004, the ACCC authorised a joint venture arrangement between Allianz, QBE and the NRMA for the collective supply of public liability insurance through a co-insurance pool to eligible NFPOs.

In broad terms the joint venture/co-insurance pool:

- establishes minimum base premiums for each category of NFPO;
- applies 'escalating factors' – determined based on the NFPO's risk profile – to calculate the final premium payable;
- establishes eligibility restrictions;
- provides cover of up to \$10 million and provides for a minimum excess of \$1000 per claim; and
- provides that commissions will not be paid to insurance brokers who place NFPOs seeking public liability insurance within the co-insurance pool – brokers may however elect to recoup commissions directly from NFPOs.

Authorisation was granted until 31 December 2006.

On 22 December 2005, the ACCC received an application for revocation of the authorisation granted on 24 March 2004 and its substitution with a replacement authorisation for a further 5 years. The CCUA provided the ACCC with further information clarifying the arrangements for which re-authorisation is sought on 4 January 2005.

Re-authorisation is sought for the joint venture agreement as originally authorised by the ACCC, subject to an amendment to the joint venture agreement made on 11 August 2005. Broadly, this amendment removes the restriction on joint venture participants individually offering public liability insurance to NFPOs unless the co-insurance pool has advised that it is not prepared to offer the NFPO public liability insurance.

A full copy of the application for revocation and substitution, the joint venture agreement and the amendments to the joint venture agreement made on 11 August 2005 is attached. Details of the public benefits and detriments that the CCUA claims are likely to result from the proposed arrangements are provided in the application.

A full copy of the application is also available on the ACCC's website
<www.accc.gov.au>.

Request for interim authorisation

The CCUA has also requested interim authorisation for the arrangements. Interim authorisation allows the parties to the proposed arrangements to engage in the subject conduct as if they had authorisation while the merits of the application are considered by the ACCC.

While the existing authorisation is not due to expire until 31 December 2006, the CCUA states that the effect of this time limit is that the existing authorisation does not extend to it entering into contracts to cover events occurring after 31 December 2006. The CCUA states that this has a significant impact on its ability to write new annual business or accept annual renewals after 31 December 2005. The CCUA advises that the vast majority of policies written by it are annual policies.

Request for submissions

To assist the ACCC in its consideration of the application it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed arrangements.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though it is not publicly available. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission, please address your submission to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Submissions can also be lodged by email to adjudication@accc.gov.au or by facsimile on 02 6243 1211.

If you intend to provide a submission in relation to the CCUA's request for interim authorisation please do so by **Tuesday 24 January 2006**. If you intend to provide a submission in relation to the CCUA's substantive application for revocation and substitution please do so by **Friday 10 February 2006**.

Please inform us if you do not wish to make a submission at this time, but would like to be informed of the progress of the application at the draft and final determination stages. You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding this application.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact me on 03 9290 1475.

Yours sincerely

A handwritten signature in black ink, appearing to be 'GJ' or 'Gavin Jones'.

Gavin Jones
Director
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the ACCC assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the TPA) requires the ACCC to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The ACCC is required under the TPA to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the ACCC may still grant confidentiality where, in the ACCC's view, it is desirable to do so.

The ACCC also has the discretion, under s89 of the TPA, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The ACCC expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the ACCC:

- (a) where the request is that a whole document be excluded, the words **"Restriction of Publication Claimed"** should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words **"Restriction of Publication of Part Claimed"** should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the ACCC deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the ACCC denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the ACCC will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the ACCC will return the original material and destroy all associated copies. The ACCC will not consider this material when reaching its decision.

If the ACCC does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the ACCC pursuant to its powers generally under the *Trade Practices Act*.

Company

ACE-IRM Insurance Broking Group
ACT Insurance Brokers
Aged and Community Services Australia
Agricultural Societies Council of NSW
Aradlay Insurance Brokers
Association of Childrens Welfare Agencies
Association of Independent Schools of South Australia
Australian Charities
Australian Capital Territory Consumer Affairs Bureau
Australian Red Cross NSW
CommInsure
Community Information Strategies
Council of Australian Museum
Council of Social Service of New South Wales
Country Women's Association of Australia
Country Women's Association of NSW
Federation of Australian Historical Societies Inc
Fundraising Institute – Australia
Gerling Australia Insurance
Insurance Brokers Disputes Limited
Lumley General Insurance Ltd
National Association of Community
Our Community Pty Ltd
Queensland Council of Parents' & Citizens' Associations Incorporated
Queensland Council of Social Service
Royal Agricultural Society of Tasmania
SA Tourism Alliance
St John Ambulance Australia
The Association of Apex Clubs of Australia
Victorian Council of Social Service
Merv Oakley Goju Karate
AON Group Australia
Australian Council of Social Service
Australian Lawyers Alliance
Australian Prudential Regulation Authority
Australian Unity and General Insurance
CGU Insurance
Combined Insurance Company of Australia
Commonwealth Department of Family and Community Services
Consumer Affairs Victoria
Consumer Law Centre of Victoria
Council of Small Business Organisations of Australia Ltd
Department of Communications, Information Technology and the Arts
Department of Consumer and Employment Protection
Department of Treasury
Jardine Lloyd Thompson Australia
Lions Australia
Lloyd's Australia Limited

Local Government Association of Queensland Inc
Local Government Association of Tasmania
Local Government Association of the Northern Territory
Local Government Association
of South Australia
Marsh Pty Ltd
Munich Reinsurance Company of Australasia Ltd
Municipal Association of Victoria
National Insurance Brokers Association
New South Wales Office of Fair Trading
Northern Territory Office of Consumer Affairs
NSW Sport and Recreation
Queensland Office of Fair Trading
Queensland Tourism Industry Council
RACQ Insurance Ltd
Vero Insurance
South Australia Office of Consumer and Business Affairs
Sport and Recreation Victoria
Suncorp Metway Insurance Ltd
Department of Justice
Territory Insurance Office
The Institute of Actuaries of Australia
Volunteering Australia
Western Australian Local Government Association
Westpac General Insurance
Endeavour House
Zurich Financial Services Australia Ltd
RDA Australia
Confederation of Australian Sport
Isolated Children's Parents Association Australia Inc
Kiama and District Arts Council Inc
The Isolated Children's Parents Association of NSW
Wesfarmers Federation Insurance
Cumpston Sarjeant
Australian Council for the Arts
Westpool
Wildlife Preservation Society of Queensland
Rural and General Insurance Broking
QBE Insurance
Global Underwriting