



**Date** 30 May 2006  
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Dear Mr Jones

### **Community Care Underwriting Agency**

#### **Application for revocation and substitution of authorisations A30217 and A30218**

We refer to the Commission's draft determination dated 4 May 2006 (***draft determination***).

In the draft determination the Commission indicates that it does not propose to grant ongoing authorisation in the terms sought by the applicants in respect of the joint venture arrangements which govern the operation of the CCUA co-insurance pool (***the applicants***). It is the applicants' view that the public benefit is overwhelmingly served by the approval of the proposed arrangement and greatly outweighs any public detriment occasioned by the conduct.

The basis of the Commission's decision appears to be that it is not satisfied that the availability and affordability of public liability insurance for NFPOs would be better, were the proposed arrangements for the operation of the CCUA co-insurance pool authorised.

The Commission has sought more information in relation to the contention that the co-insurance pool improves affordability or availability of public liability insurance. The applicants submit that any exercise conducted in respect of CCUA's 1600 policy holders, that would enable the applicants to submit the data sought would be very time-consuming and costly, and would be unlikely to provide any greater insight into the issue than the comprehensive reports referred to below.

The applicants submit that the Commission in considering this issue should be guided by observations contained in the following recent departmental reports:

- Report by the NSW Parliament General Purpose Standing Committee No 1 into Personal Injury Compensation legislation published December 2005.

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- SA Parliament Economic and Finance Committee report on public liability published in December 2005.
- Report by the Department of Social Administration and Social Work, Flinders University entitled *'Insurance and Risk Management: Unravelling Civil Society'* dated May 2005.

As the Commission notes, interim authorisation for the co-insurance pool arrangements was granted in November 2002, a time when the market within which public liability is supplied was in a state of crisis. Its formation was a direct response to the calls from Government and the community for insurance companies to take steps to address this crisis.

The applicants' desire to continue the operation of the pool arrangement is an expression of their commitment to the community and not borne out of any commercial incentive. The applicants also wish to emphasise that the 1600 CCUA policyholders represent a significantly larger number of community groups and, ultimately, hundreds of thousands of individuals and families who are involved with and benefit from the existence of such community groups.

The applicants submit that essentially, in addition to the existing evidence about the relative difficulty that NFPOs have in acquiring affordable public liability insurance, there is another factor that militates strongly in favour of authorising the proposed arrangements. This is the well documented cyclical nature of the market in which public liability insurance is provided which means that some hardening in the market is inevitable. However difficult it then becomes for NFPOs to obtain public liability insurance, the unique historical circumstances that gave rise to the formation of the CCUA co-insurance pool means that should the co-insurance pool not continue, the likelihood of it being recreated at any time in the future is minimal. The applicants fear that if the pool arrangement is not permitted to continue beyond the short term, at least some current policyholders may be unable to procure public liability insurance, particularly because very few competing insurers have a comprehensive understanding of the nature and needs of NFPOs and are still unwilling to insure small NFPOs.

The applicants further submit that in relation to paragraph 8.9 of the draft determination the wording proposed by the Commission should be clarified to read 'continue to write or renew policies up until 31 December 2006 so long as such policies do not expire after midnight on 31 December 2007' (or such other later dates as the Commission accepts for the term of the authorisation granted).

Yours sincerely

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