

FORM G

COMMONWEALTH OF AUSTRALIA

TRADE PRACTICES ACT 1974 – subsection 93(1)

EXCLUSIVE DEALING NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(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:

N94272 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:

5 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 products.

(b) Description of the conduct or proposed conduct:

Guild wishes to be able to determine the premium for its professional indemnity insurance which is offered to members of the Australian Association of Occupational Therapists – WA Inc. (“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 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:

Occupational Therapists, both members and non-members of the association.

(b) Number of those persons:

(i) At present time:

646 (including 178 student members)

(ii) Estimated within the next year:

650

(c) Where number of person 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:

Nigel Grimshaw
Compliance Manager
Guild Insurance Limited
5 Burwood Road
Hawthorn, Vic. 3122.

Dated the 13th day of October 2009.

Signed on behalf of the applicant



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**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 authorised under the Insurance Act 1973 to conduct new or renewal insurance business in Australia.
- 1.2 Occupational Therapists Western Australia (“the Association”) is the state professional body representing occupational therapists in Western Australia. The Association has represented occupational therapists in Western Australia since 1952.
- 1.3 Some of the functions of the Association include ensuring the continuing professional development of occupational therapists and liaising with Government and statutory bodies issues relevant to its industry.
- 1.4 One of the primary benefits of membership of the Association is access to professional indemnity insurance negotiated by the Association on behalf of its members at rates which are more beneficial than are likely to be obtained by each occupational therapist if they negotiated their own professional indemnity insurance.
- 1.5 Membership of the Association also entitles members with access to information and advice about matters relevant to professional risk management in the occupational therapy industry. Such as:
- Professional magazines, journals and newsletters provided to Association members increase awareness of professional risks and new developments in occupational therapy knowledge and practice.
 - The Association organises and notifies members about seminars relating to developments in occupational therapists knowledge and practice including in relation to risk management issues.
 - The Association organises and promotes a biennial State conference which provides members with opportunities to keep up to date and to build and maintain networks.

- The Association has also established Special Interest Groups for 18 specific areas of interest within the Occupation Therapy profession to allow the devolution of specialist knowledge within the profession.
- The Association provides members with access to a library of educational, research materials and policies and procedures relating to occupational therapy.

1.6 The Association acts as a single contact point through which Guild is able to communicate to the majority of occupational therapists regarding professional indemnity issues and to assist with the Association's own professional risk education and management programs and strategies.

1.7 Following disciplinary proceedings before the Occupational Therapists Registration Board therapists can seek the assistance of the Association in finding a therapist who can be ratified by the Registration Board for supervision of the member, so as to minimise the risk of future claims against them.

1.8 Because of the capacity of the Association to provide ongoing information, advice and education to its members about professional developments in occupational therapist knowledge, practice and risk management issues, Guild recognises that Association members are more likely to have a safer "risk profile" than non-members. That is, the risk of a successful professional negligence claim being made against an occupational therapist is reduced by virtue of their membership of the Association.

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 occupational therapists as a result of the access to the risk management information and advice referred to in paragraphs 1.5 and 1.6 above.
- 3.3 Additional likely benefits to the public include:
- (a) reduction in cost pressures on occupational therapists 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 occupational therapists due to the “pooling” of the individual risk of a large body of occupational therapists through the Association and its safer risk profile.
- 3.4 Guild submits that the conduct will have no detrimental effect on competition in the general insurance market and will in fact enhance competition within this market.
- 3.5 Occupational therapists have access to many insurers, which compete vigorously with Guild in the professional indemnity insurance market. There is no element of compulsion or exclusivity in the conduct. No occupational therapist 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 13th day of October 2009



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Nigel Grimshaw
Compliance Manager
Guild Insurance Limited