



WESTERN AUSTRALIAN BAR ASSOCIATION

13 April 2012



General Manager
Adjudication Branch
The Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

FILE No:
DOC:
MARS/PRISM:

Dear Sir

Notification of Exclusive Dealing

I enclose, on behalf of the Western Australian Bar Association (**Association**)

1. Notification of Exclusive Dealing (Form G) (third line forcing notification);
2. Confidential Attachment A, in respect of which restriction of publication is claimed as outlined below;
3. Attachment B (parts of which are confidential), in respect of which restriction of publication of the parts identified is claimed as outlined below;
4. the Association's cheque in payment of the lodgement fee of \$100,

in respect of the Association's proposed group life insurance scheme.

Restriction of publication claimed

As noted above, the Association claims restriction of publication of:

1. the whole of Confidential Attachment A, which sets out commercially sensitive information about the annual premiums under the proposed group life insurance scheme and the usual premiums under the proposed insurer's retail policy for non-smokers; and
2. those parts of Attachment B marked in red, which are commercially sensitive and also include details of premiums payable under the proposed group life scheme and under the proposed insurer's retail policy for non-smokers.

If it assists, the Association can provide, on request, a copy of Attachment B with the parts in respect of which restriction of publication is claimed redacted.

Yours sincerely

Theo Lampropoulos SC -
President

Form G
Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N95820 The Western Australian Bar Association (**Association**)

- (b) Short description of business carried on by that person:
(Refer to direction 3)

The Association is a voluntary professional association of legal practitioners practising solely as independent barristers in Western Australia. It is constituted as an incorporated body under the *Associations Incorporation Act 1987* (WA).

The Association:

- promotes the traditions and interests of the Western Australian Bar (**Bar**);
- provides support and professional development services to its members, training and further education for its members and future members of the Bar and to other legal professionals, including by providing or arranging a Bar Readers' Course for barristers or persons aspiring to join the Bar and continuing legal education to its members and to other legal professionals;
- provides benefits to its members through its affiliation with the Australian Bar Association and others, including access to discounts on a range of personal and professional products and services offered to members, including by various car dealerships, car hire companies, credit card providers, health and fitness providers, travel services and office and corporate supplies,

(together the **Membership Services**).

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

The Executive Officer
Western Australian Bar Association
Level 19
Allendale Square
77 St Georges Terrace
Perth WA 6000

2. Notified arrangement

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

The proposed arrangement relates to the provision of:

- Membership Services; and
- insurance cover for death and total and permanent disability (**Life Insurance Services**);

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

The Association proposes to offer and supply Membership Services to current and future members of the Association on the condition that all members of the Association aged under 55 years must acquire Life Insurance Services from an insurer or insurers nominated by the Association.

The Association's nominated insurer is currently proposed to be Medico Legal Insurance Group Pty Ltd (**MLIG**), underwritten by Suncorp Life and Superannuation Ltd (**Suncorp**).

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

Current and future members of the Association who are based in Western Australia. It is proposed that all members of the Association who are based in Western Australia participate in the group life insurance scheme, though there will be no obligation for members aged 55 years or over to do so and members will be able to opt out of the scheme on attaining age 55 years.

- (b) Number of those persons:

- (i) At present time:

There are presently 188 members of the Association who are based in Western Australia.

- (ii) Estimated within the next year:
(Refer to direction 6)

It is estimated that at least the same number of members of the Association will be affected by the proposed conduct as stated in 3(b)(i) above. The Association estimates that the number of members who are based in Western Australia is likely to increase to approximately 215 members in the next year, based on expressions of interest by potential members and growth in membership in previous years.

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

Not applicable

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Life insurance provides financial security to consumers and their dependents. Increased availability of affordable life insurance promotes social stability by decreasing the likelihood of financial hardship or stress in the families of deceased or disabled persons.

Members of the Association will benefit from the proposed arrangement as they will obtain insurance cover for death and total and permanent disability at significantly lower premiums than they could otherwise obtain.

Members will also receive the benefit of the insurance cover provided under the group life insurance scheme on terms that they would not otherwise be able to achieve, including limited obligations of disclosure, cover is provided regardless of age, health and insurance claims history and premiums will be fixed for 4 years irrespective of the number of claims made.

Members who may not otherwise be able to obtain insurance cover will have cover.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to:

- Confidential Attachment A, which sets out the annual premiums under the proposed group life insurance scheme and also includes

a comparison of the premiums applicable to members of the Association with Suncorp's retail policy for non-smokers; and

- Attachment B (parts of which are confidential), which sets out the features and benefits of the proposed group life insurance scheme.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 8)

For the purpose of this notification, the Association has adopted a working definition of the relevant market as the national market for the provision of life insurance services by insurers registered under the *Life Insurance Act 1995* (Cth) (**Life Insurance Market**).

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:

(Refer to direction 9)

The Association considers that the proposed arrangement will have little or no public detriment and that to the extent any public detriment arises from the proposed arrangement it will be outweighed by the benefits outlined.

The Life Insurance Market is vigorously competitive. The notified conduct will affect a few hundred people, which is a small proportion of the consumers of Life Insurance Services in Australia.

The level of insurance cover to be provided under the proposed group life insurance scheme is limited to \$250,000 for each member.

The number of potential purchasers of such life insurance cover under the proposed scheme will be initially limited to the present number of members of the Association, which at the time of completing this notification is 188.

The notified conduct is not unduly or unfairly restrictive. Members aged 55 years and over will not be required to participate in the group life

insurance scheme and a member will have the option to opt out of the scheme on attaining the age of 55 years.

Each member will be free to obtain any additional insurance cover required, which is likely in many cases, from any insurer of its choice depending on the terms and premiums he or she is able to negotiate.

(b) Facts and evidence relevant to these detriments:

Please refer to Attachment B (parts of which are confidential), which sets out the features of the proposed group life insurance scheme.

7. Further information

Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Sarah Russell
Member of Bar Council
Western Australian Bar Association
Level 19
Allendale Square
77 St Georges Terrace
Perth WA 6000

Tel: (08) 9220 0493

Email: srussell@francisburt.com.au

Dated: 13 April 2012

Signed on behalf of the applicant



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(Signature)

Theo Lampropoulos SC
President
The Western Australian Bar Association

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

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. 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 section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

RESTRICTION OF PUBLICATION CLAIMED

CONFIDENTIAL ATTACHMENT A

**PROPOSED ANNUAL PREMIUMS FOR WA BAR
GROUP LIFE INSURANCE SCHEME**

RESTRICTION OF PUBLICATION OF PART CLAIMED

ATTACHMENT B

Overview of the proposed WA Bar Group Life Insurance Scheme

The Association proposes to offer to its members insurance cover for death or terminal illness and total and permanent disability as a benefit to members of the Association through a group life insurance scheme provided by Medico Legal Insurance Group Pty Ltd underwritten by Suncorp Life and Superannuation Ltd as insurer.

Group schemes afford very significant advantages to group members.

First, by obtaining cover as a group, the premiums offered by the insurer are lower than premiums that would be available to members if they sought to obtain cover individually. The insurer has also made significant concessions on policy terms and conditions that individual members would otherwise be unlikely to achieve.

Second, the insurance is offered purely by reason of membership of the Association. Therefore, the cover is on a “no questions asked” basis. There is no medical examination and no health questionnaire and only a limited disclosure obligation as to age and gender.

Third, the premiums are well below ■ an individual retail premium payable for life and TPD insurance offered by the insurer. The scheme provides low premiums to all members. It is not the case that by the scheme some members are subsidising others. This ensues from the bargaining position of the group and the commercial advantages which flow to the insurer being able to insure a large number of people as a group, thereby guaranteeing a large premium pool, while at the same time being able to spread the risk over the group as a whole.

Features of the proposed WA Bar Group Life Insurance Scheme

The important features of the proposed scheme are as follows:

1. **Type of cover.** The scheme provides for each of death and TPD cover. The notion of death is obviously self-explanatory. Under the TPD cover, the insurer pays if the member is permanently incapacitated from working.
2. **“total and permanent disability” definition.** Under the policy, the TPD cover applies to “own occupation”. Therefore, if a member is unable to continue work as a barrister, the insurer will pay on the policy, even though the member may be capable of performing some other work. The insurer has advised that TPD claims that are made are often “stress” related. A practising barrister may be unable to continue work as a barrister, but be capable of some less demanding work. Even in that situation, the insurer will pay the benefit. This is not typically available under other retail policies.

EXCLUDED FROM
PUBLIC REGISTER

RESTRICTION OF PUBLICATION OF PART CLAIMED

3. **No questions asked.** Premiums for all life and TPD cover are calculated by reference to gender and age. It is necessary for each member to disclose those two pieces of information. No other disclosure is required.
4. **\$250,000 in cover.** Upon death or diagnosis of a terminal illness, or upon assessment of total and permanent disability, the insurer pays \$250,000. Any higher cover sought by a member must be independently arranged and negotiated by that member outside the scheme.
5. **Speed of payment of claims.** Under general retail policies, the cover is conditional in the sense that the cover has been given on the basis of disclosure (or lack thereof) and the liability of the insurer is conditional upon the veracity of that disclosure. There is sometimes some delay in "processing" a claim. Under the proposed scheme, the cover is unconditional. Therefore, there is no "processing" of any claim. Upon death of a member, the beneficiary of the policy will receive \$250,000 within seven days of production of a death certificate.

Claims for TPD obviously have to be processed. However, the insurer has assured the Association that members making a claim will be assisted in the process so that the claim is determined and paid as quickly as possible.

6. **Opt out at 55.** Premiums do increase significantly after age 55, although still much lower than retail rates. An "opt out" has been negotiated, so that any member over 55 years of age can elect not to participate in the group life scheme. There is no obligation to "opt out". Once a member has "opted out", he or she cannot later "opt in" without fulfilling those conditions which usually apply to retail policies, eg medical examinations, disclosure etc.
7. **Cover finishes at 70.** Like all life insurance, the cover ceases at age 70.
8. **TPD does not taper off after 60.** TPD cover ceases at 65. This is a standard feature of most retail policies. However, under such policies the level of TPD cover reduces from age 60 at the rate of 20% per year until it ceases at 65. Recognising that members may wish to continue in practice after 65, the insurer has agreed for the level of TPD cover to remain at \$250,000 until age 65. This is a significant concession.
9. **Premiums.** Set out below is a schedule of the premiums payable through the scheme, together with comparative stand alone premiums charged by the insurer under a retail policy. The retail premiums are only offered on a stand alone basis once there has been disclosure, medical examinations etc. If there are any pre-existing medical conditions, or even family history of illness, those premiums can be the subject of "loading" and can be even double.

RESTRICTION OF PUBLICATION OF PART CLAIMED

Insurance may of course be declined altogether. None of these retail policy limitations will apply under the proposed scheme.

Males

Age next birthday	Yearly premium – WA Bar Group policy	Yearly premium – Suncorp – non-smoker Retail policy
25		
30		
35		
40		
45		
50		
55		
60		

EXCLUDED FROM PUBLIC REGISTER

Females

Age next birthday	Yearly premium – WA Bar Group policy	Yearly premium – Suncorp – non-smoker Retail policy
25		
30		
35		
40		
45		
50		
55		
60		

EXCLUDED FROM PUBLIC REGISTER

Note: Smoker rate under retail policies would result in substantially higher premiums than the non-smoker premiums shown above.

As can be seen from the table above, the rates negotiated with the insurer are generally substantially less [redacted] the premium rates, which a member could obtain by approaching the insurer directly.

10. Review. The Association’s Bar Council has negotiated with the insurer to fix the amount of the premium rates for 3 years irrespective of the number of claims made. This is a significant concession by the insurer, which is very valuable.

11. Administering the scheme. The insurer, Suncorp, would afford the Association actuarial and technical assistance in setting up the scheme and administering it going forward. This will reduce the Association’s administration costs.

RESTRICTION OF PUBLICATION OF PART CLAIMED

12. Mandatory for members under 55.

A central feature of all group life schemes is that the insurer takes on the group as a whole. It does not just take members of the group who wish to participate. It is this collective feature of group schemes which enables insurers to offer low premiums and special terms not available in usual retail policies. The effect of this is if the Association were to conduct a special general meeting to pass a resolution to bring the scheme into effect, membership of the scheme will be compulsory for all members under 55.

The membership subscription would note the general membership fee and premium and both would be required to be paid to gain and maintain membership of the Association.

Overview of how the proposed group life insurance scheme will operate

It is proposed that:

- (A) under the group life insurance scheme, the Association will be the representative body of the group as trustee, effecting insurance for each and every group member;
- (B) the scheme will provide cover of \$250,000, which the insurer will pay upon death or diagnosis of a terminal illness, or upon assessment of total and permanent disability of a member;
- (C) as the insurer requires the participation rate of the membership be at least 75% to provide cover at the premiums offered, it will be a condition of membership of the Association that a member pays the insurance premium that the insurer ascribes to that member;
- (D) any member aged 55 years or over can elect not to participate in the group life scheme;
- (E) the premium will be calculated by reference to gender and age only, not by reference to any pre-existing medical condition – the insurance will be offered purely by reason of membership of the group with no need for members to have a medical examination or to complete a health questionnaire. There will be no disclosure obligation other than as to age and gender. It is irrelevant whether or not a member:
 - has been denied insurance in the past;
 - has a pre-existing medical condition;
 - is a smoker;
 - drinks more than he or she should;
 - engages in risky leisure activities.