

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:

N98504 This Notice is given by McGrath Australasia Pty Ltd ABN 35 118 129 507 (**McGrath**).

(b) Short description of business carried on by that person:

McGrath is the franchisor for the network of over 50 franchised real estate agency businesses operating under the 'McGrath' brand (**McGrath Offices**).

Franchisees operate McGrath Offices pursuant to a franchise agreement with McGrath (**Franchise Agreement**). Under the Franchise Agreement, each franchisee is granted the right to operate a McGrath Office using the "McGrath" brand and associated intellectual property. A condition of the franchise grant is that the franchisee's McGrath Office is designed and branded in accordance with the design specifications that McGrath has developed for McGrath Offices.

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

C/- Fiona Wallwork
Norton Rose Fulbright Australia
Level 18, Grosvenor Place
225 George Street
SYDNEY NSW 2000

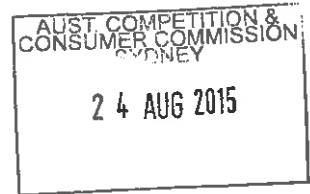
2 Notified Arrangement

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

This Notice relates to the proposed requirement that McGrath franchisees obtain office fit out design services from a supplier approved by McGrath.

McGrath has developed certain specifications for the design, layout, branding and fitout of a McGrath Office. The design and fitout of a McGrath Office in compliance with the specifications, ensures brand consistency throughout the network and assists facilitate the delivery of consistent and efficient real estate agency services throughout the network.

McGrath has approved The General Store Pty Ltd ACN 161 436 148 (**The General Store**) as its 'Approved Supplier' for fit out design services for a McGrath Office.



(b) Description of the conduct or proposed conduct:

McGrath franchisee contractual obligations

The Franchise Agreement includes an obligation on the franchisee to fit out and refurbish the franchisee's nominated premises so that it complies with McGrath's requirements for the layout, colour and design of a McGrath Office.

Clause 14.1 of the Franchise Agreement provides that:

- (1) The Franchise Owner must, at its Cost, by the Commencement Date, fit out and refurbish the Premises so that it complies with McGrath's requirements for the layout, colour and design of a McGrath Office as specified by McGrath.*
- (2) The Franchise Owner must use the services of any Approved Supplier specified by McGrath for the provision of fit out design services for the McGrath Office.*
- (3) The Franchise Owner must not commence the fit out until the layout, colour and design plans have been approved in writing by McGrath.*

Proposed conduct

McGrath proposes to appoint The General Store as its 'Approved Supplier' for fit out design services for a McGrath Office and require that its franchisees to use the services of The General Store.

McGrath may change the appointed Approved Supplier from time to time, and will notify McGrath franchisees of any change.

The above conduct falls within the definition of exclusive dealing in sections 47(6) and (7) of the Competition and Consumer Act 2010 (Cth) as McGrath proposes to:

- (i) supply its services as franchisor on the condition that the franchisee obtains certain services from, McGrath's Approved Supplier; and
- (ii) refuse to supply its services as franchisor (or refuse to enter into a franchise agreement with the franchisee) if the franchisee does not use the Approved Supplier.

As outlined below, McGrath maintains that the public benefits that will result from the proposed conduct outweighs any public detriment.

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:

Franchisees who operate McGrath Offices under franchise from McGrath.

(b) Number of those persons:

(i) At present time:

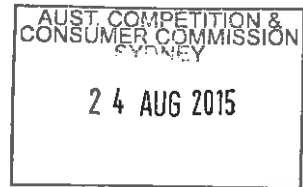
There are 38 McGrath franchise owners at the present time (with more than 50 McGrath Offices).

(ii) Estimated within the next year:

McGrath estimates that within the next 12 months there will be more than 45 McGrath franchise owners (although the actual number will depend on market trends, demand, etc).

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

Refer to Annexure A.



4 Public benefit claims

- (a) **Arguments in support of notification:**

By nominating an Approved Supplier for fit out design services for a McGrath Office, McGrath seeks to ensure:

- (i) delivery of quality design and fitout services by a supplier that is able to provide services in accordance with McGrath's specifications for the design, layout, branding and fitout of a McGrath Office; and
- (ii) consistency in delivery of services to the McGrath franchise network

McGrath has used The General Store for office fitout and design services for its own real estate agency offices. The franchisees will obtain the benefit of McGrath's existing relationship with the General Store. McGrath has worked closely with The General Store to ensure that its services will meet McGrath's requirements for the design and fitout of a McGrath Office and will be provided in a time and cost effective manner.

McGrath submits that the intended effect and benefits of the arrangement are to:

- (i) reduce time and cost spent by franchisees in sourcing a suitable supplier that can provide the relevant services in accordance with McGrath's requirements;
- (ii) help the franchisee to ensure that the design and fitout of its McGrath Office will satisfy McGrath's standards, minimising the need for the franchisee to undertake additional works and rectification works;
- (iii) help ensure that the services undertaken by the service provider are undertaken in a time and cost effective manner;
- (iv) ensure consistency, uniformity and quality control, which is paramount to the McGrath brand and image and will help ensure that the market positioning of the McGrath brand continues to grow; and
- (v) give the franchisees the benefit of the competitive prices and terms for the provision of office fit out design services by the Approved Supplier, which cost savings will better position McGrath franchisees to offer more competitive services to consumers.

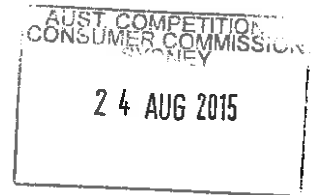
- (b) **Facts and evidence relied upon in support of these claims:**

Refer to paragraphs 4(a)(i)-(iii) above.

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):

McGrath submits that the markets primarily relevant to the assessment of this notification are the Australian markets for:



- (i) Residential real estate sales and purchases;
- (ii) Residential real estate property management services;
- (iii) Commercial real estate sales and purchases;
- (iv) Commercial real estate property management; and
- (v) Commercial fit out design services.

McGrath submits that the markets listed above are highly competitive markets with a large number of active and meaningful participants.

The Australian markets for residential and commercial real estate are serviced by a large number of providers including, but not limited to, Ray White, Raine&Horne, Richardson & Wrench, Bresic Whitney, LJ Hooker, First National Real Estate, Century 21, Laing and Simmons, and a large number of independent real estate agents.

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:**

McGrath does not believe the notification will not result in a detriment to the public for the following reasons:

- (i) The Australian real estate services market is a highly competitive market with a number of participants;
- (ii) The Australian office fit out and design services market is a highly competitive market with a number of participants;
- (iii) The business carried on by franchisees is substantially that of providing real estate agency services, and the requirement that the franchisee use a specified supplier for office fit out design services will assist the franchisee to provide the real estate agency services in a cost effective and consistent manner; and
- (iv) The franchisees are only required to use General Store where General Store is able to provide the office fit out and design services. If General Store is not able to provide the services, the franchisee may use an alternative supplier.

- (b) **Facts and evidence relevant to these detriments:**

Refer to paragraphs 6(a)(i)-(iv) above.

7 Further information

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

McGrath has authorised Fiona Wallwork, Partner, of Norton Rose Fulbright Australia to provide additional information in relation to this notification.

Fiona Wallwork can be reached at (02) 9330 8540 or at the following postal address:

Level 18, Grosvenor Place

225 George Street
SYDNEY NSW 2000

COMPETITION &
MER COMMISSION
SYDNEY
24 AUG 2015

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 the 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.

24 AUG 2015

ANNEXURE A

SUBMISSION BY MCGRATH AUSTRALASIA PTY LTD IN SUPPORT OF NOTIFICATION UNDER
SECTION 93(1) OF THE *COMPETITION AND CONSUMER ACT 2010*

List of McGrath franchise owners current as at 10 August 2015

Branch	Franchisee	Business address
McGrath Mona Vale	NB Property Pty Limited	Shop 1, 20 Bungan Street Mona Vale NSW 2103
McGrath Avalon	NB Property Pty Limited	33 Avalon Parade Avalon NSW 2107
McGrath Lane Cove	MNS Property Pty Ltd	15 Burns Bay Road Lane Cove NSW 2066
McGrath Crows Nest	MNS Property Pty Ltd	Shop 1A, 29 Holtermann Street (cnr Alexander Street) Crows Nest NSW 2065
McGrath Lindfield	UNS Property Pty Ltd	280 Pacific Highway, Lindfield NSW 2070
McGrath Cronulla	MCG Realty Pty Limited	Suite 1, 2 Wilbar Avenue Cronulla NSW 2230
McGrath Neutral Bay	Yellow Brick Road Pty Ltd	3 Young Street Neutral Bay NSW 2089
McGrath Mosman	Yellow Brick Road Pty Ltd	59 Belmont Road Mosman NSW 2088
McGrath Terrigal (Central Coast)	JMB (NSW) Pty Limited	112 The Esplanade Terrigal NSW 2260
McGrath St George	MG South Pty Limited	860A King Georges Road South Hurstville NSW 2221
McGrath Sylvania	MCG Sylvania Pty Ltd	246 Princes Highway Sylvania NSW 2224
McGrath Menai/Illawong	MCG Sylvania Pty Ltd	Shop 16, Illawong Shopping Village Fowler Road Illawong NSW 2234

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
24 AUG 2015

Branch	Franchisee	Business address
McGrath Epping	NDH Property Pty Limited	Suite A, Ground Floor 3 Carlingford Road Epping NSW 2121
McGrath Warners Bay	Di-Nardo Apostolovski Property Sales Pty Ltd	Unit 1, 452 The Esplanade Warners Bay NSW 2282
McGrath Gosford	WSB Pty Limited	2/482 Pacific Highway Wyoming NSW 2250
McGrath Ettalong	WSB Pty Limited	277 Ocean View Road Ettalong Beach NSW 2257
McGrath Collaroy	Northern Beaches Prestige Property Sales Pty Limited	Shop 4, 1073 Pittwater Road Collaroy NSW 2097
McGrath Hunters Hill	HH Property Pty Ltd	Suite 1, 35 Alexandra Street Hunters Hill NSW 2110
McGrath Northbridge	Yellow Brick Road Property Pty Ltd	146 Sailors Bay Road Northbridge NSW 2063
McGrath Bowral	BBRE Sales Pty Limited	Shop 5, The Grand Arcade, 293 Bong Bong Street Bowral NSW 2576
McGrath Camden	MRE (Sales) Pty Limited	2/6 Somerset Avenue Narellan NSW 2767
McGrath Wentworth Falls	P P Gilbey Pty Limited	18 Station Street Wentworth Falls NSW 2782
McGrath Port Macquarie	Harem Pty Limited	Suite G1, 147 Gordon Street Port Macquarie NSW 2444
McGrath Wollongong	Monarco Pty Limited	74 Crown Street Wollongong NSW 2500
McGrath Thirroul	Monarco Pty Limited	5/369 Lawrence Hargrave Drive Thirroul NSW 2515
McGrath Ballina	Riverwalk Realty Pty Ltd	176 River Street Ballina NSW 2478

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
24 AUG 2015

Branch	Franchisee	Business address
McGrath Coolangatta/ Tweed Heads	Eldure Pty Limited	35 Wharf Street Tweed Heads NSW 2485
McGrath Palm Beach	Samel Holdings Pty Ltd	17 Sixth Avenue Palm Beach QLD 4221
McGrath Pymble	Smollen Property (Pymble) Pty Ltd	939 Pacific Highway Pymble NSW 2073
McGrath Castle Hill	Hills Property Pty Ltd	11/1 Terminus Street Castle Hill NSW 2154
McGrath Belconnen	ATM Residential Pty Ltd	Level 1, The G, 46-50 Hibberson Street Gungahlin ACT 2912
McGrath Hornsby	Danrose Holdings Pty Ltd	16-20 Edgeworth David Avenue, Hornsby NSW 2077
McGrath Brighton	K & M Property Pty Ltd	326 Bay Street Brighton-Le-Sands NSW 2216
McGrath Newcastle City	MCG Newcastle Pty Ltd ATF MCG	Suite 3, 142 Union Street The Junction NSW 2291
McGrath Woden	Burley Griffin Pty Ltd	42 Townsend Street Phillip ACT 2606
McGrath Dickson	Canberra City Holdings Pty Ltd	4/3 Cape Street Dickson ACT 2602
McGrath Toowoomba	Torbway Pty Ltd	Suite 3, 195 Hume Street Toowoomba QLD 4350
McGrath Kiama	Carlindi Pty Ltd	2/110-112 Terralong Street Kiama NSW 2533
McGrath Ascot	Premium Property Brisbane Pty Ltd	138 Racecourse Road Ascot QLD 4007
McGrath Wynnum Manly	Keppel Lifestyle Creations Pty Ltd	Shop 19, 664-668 New Cleveland Road Gumdale QLD 4154
McGrath Bella Vista	Hills Property Pty Ltd	11/1 Terminus Street Castle Hill NSW 2154
McGrath Byron Bay	NRGC Byron Bay Pty Limited	Shop 7a, 21-25 Fletcher Street Byron Bay NSW 2481

24 AUG 2015

Branch	Franchisee	Business address
McGrath Buderim	Chris Pace Consulting Pty Ltd in partnership with Damien Michael Consulting Pty Ltd	Shop 2, 8-10 King Street Buderim QLD 4556
McGrath Engadine	Shire Real Estate Pty Limited	1005 Old Princes Highway Engadine NSW 2233
McGrath Townsville	Tabkam Pty Ltd	71 Eyre Street North Ward QLD 4810
McGrath Chatswood	Rise Estate Agents Pty Ltd	Shop 11 409 Victoria Avenue Chatswood NSW 2067
McGrath Rouse Hill	Northwest Property Partners Pty Ltd	Shop GR 041 10-14 Main Street Rouse Hill NSW 2155
McGrath Picton	MRE (Sales) Pty Limited	1/123 Argyle Street Picton NSW 2571
McGrath Dee Why	Northern Beaches Prestige Property Sales	854A Pittwater Road Dee Why NSW 2099
McGrath Berry	Carlindi Pty Ltd	2/68 Albert Street Berry NSW 2535
McGrath Ryde	HH Property Pty Ltd	100 Blaxland Road Ryde NSW 2112
McGrath Bankstown	Black Metal Pty Ltd	101 Bankstown City Plaza Bankstown NSW 2200
McGrath Revesby	MG South West Pty Ltd	8 Marco Avenue Revesby NSW 2212
McGrath Rockhampton	Sailboe Pty Ltd as trustee for The Prime Properties Unit Trust	189 East Street Rockhampton QLD 4700
McGrath Forestville	Hutton Brewer Group Pty Ltd	Shop 37, The Centre Darley Street Forestville NSW 2087
McGrath Frenchs Forest	Hutton Brewer Group Pty Ltd	Level 2, Suite 4, Forestway Shopping Centre Frenchs Forest NSW 2086
McGrath Terrey Hills	Sydney Country Living Pty Ltd	2/6 Booralie Road Terrey Hills NSW 2084

Branch	Franchisee	Business address
McGrath Noosa	M & K Realty Pty Ltd	Shop 4, 1 Lanyana Way Noosa Heads QLD 4567

AUSTRALIAN COMPETITION &
CONSUMER COMMISSION
SYDNEY
24 AUG 2015