

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.

1. Applicant

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

N98512 MDA National Limited ACN 055 801 771 (**MDANL**) of Level 3, 88 Colin Street, West Perth in the State of Western Australia.

N98513 MDA National Insurance Pty Ltd ABN 56 058 271 417 (**MDANI**) of Level 3, 88 Colin Street, West Perth in the State of Western Australia,

(together the **Applicants**)

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

MDANI is a provider of medical and dental indemnity insurance.

MDANL is a mutual medical defence organisation.

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

Jackson McDonald
Attention: Rachel Webber
Level 17, 225 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:**

This notice relates to products and services supplied by the Applicants, being member services and insurance services and products, in particular, offering professional indemnity insurance to medical health professionals.

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

MDANL is a medical defence organisation formed to protect the interests of its medical professional members. Members of MDANL are entitled to benefits including assistance when dealing with medico-legal claims, access to a 'Support in Practice Program' and MDANL educational activities which assist members managing risks inherent in medical practice and access to MDANL publications. Members of MDANL may access insurance services through MDANI.

MDANI is a subsidiary of MDANL. MDANI is an authorised general insurer and a provider of certain professional indemnity insurance policies to certain medical and healthcare professionals within Australia.

By this notification, the Applicants notify the ACCC of a proposed offer to specific medical health professionals who are doctors in training within Victoria and are members of Australian Medical Association (Victoria) Limited ACN 064 447 678 (**AMA Victoria**). AMA Victoria represents and promotes the interests of medical health professionals and medical students in Victoria.

The Applicants propose to offer to doctors in training who are members of AMA Victoria (**AMA Victoria Members**):

- (a) complimentary or discounted membership to MDANL;
- (b) complimentary access to MDA National Rewards, an online rewards program that gives access to special pricing on some flights, gift cards and merchandise; and
- (c) complimentary or discounted MDANI professional indemnity insurance.

The proposed offers together are the **Proposed Offer**.

The Applicants intend that the benefits comprised in sub-paragraphs (a) and (c) of the Proposed Offer be made available for a period of two years commencing from 1 September 2015 (**Offer Period**). It is proposed that the complimentary access to MDA National Rewards referred to at in sub-paragraph (b) of the Proposed Offer will also commence on 1 September 2015 and will continue until at least the end of April 2016, at which point the continuance of this program will be reviewed by MDANI. Subject to MDANI deciding to continue with the program, it will continue to be made available to AMA Victoria members in the risk categories described below on a complimentary basis. The Proposed Offer may be promoted before 1 September 2015. Whilst AMA Victoria will promote MDANI as its 'premium provider' of professional indemnity insurance to AMA Victoria Members, AMA Victoria Members will not be required to be a member of MDANL or obtain professional indemnity insurance from MDANI as a condition of their membership.

The Proposed Offer would initially be made available to AMA Victoria Members in the following MDANI risk categories and on the following basis:

- (a) PGY4 (Post Graduate Year 4) – complimentary;
- (b) PGY5 (Post Graduate Year 5) – complimentary;
- (c) DiST (Doctor in Specialist Training) – 50% discount¹.

The Proposed Offer will also be available to AMA Victoria Members in the above categories who are already members of MDANL at their future annual renewal. Whilst the Proposed Offer will be available from 1 September 2015, AMA Victoria Members who take up the Proposed Offer will be required to renew their MDANI professional indemnity insurance policy provided as part of the Proposed Offer at expiration of such policy, usually on an annual basis, if they wish to continue to take advantage of the Proposed Offer.

¹ The Doctor in Specialist Training (DIST) category is for doctors who graduated more than 5 years ago and are enrolled in an initial specialist fellowship training program of an accredited Australasian/Australian College.

The Applicants may vary the basis on which the Proposed Offer is made available to AMA Victoria Members in the above categories from time to time, which may include varying the amount of the discount provided (whether by virtue of change to the underlying fee generally charged to persons not being AMA Victoria Members, or otherwise).

The AMA Victoria promotes and protects the interests of the medical profession in Victoria. AMA Victoria's objects as set out in its constitution include to:

- (a) promote, maintain, protect, advance and extend the honour, interests and standing of the medical profession and AMA Victoria and to promote the science of medicine;
- (b) to protect and preserve the standing of the profession and the professional and academic independence of its members and to preserve, maintain, promote and advance their intellectual, philosophical, social, political and legal interests;
- (c) to act as the principal coordinating body for the medical profession in the State of Victoria and a forum for the medical profession at which consultation and communication takes place;
- (d) to collect and circulate statistics and other information relating to the medical profession;
- (e) to advance exemplary professional conduct and efficiency, to promote fair and honourable practice, to discourage or prevent malpractice or professional misconduct and to ensure the highest clinical, ethical and scientific standards in the delivery of healthcare to the community;
- (f) to consider and advise on any issue of medical policy;
- (g) to consider and advise on any issue of health policy; and
- (h) to consider, originate and promote improvements or alterations in the law relating to the medical profession, to petition the Parliament of the State of Victoria and to take such other steps and proceedings deemed expedient for carrying out this object.

The AMA Victoria provides AMA Victoria Members with a range of professional and industrial services including access to a team of professional staff to support, advise, represent and guide members. It offers its members:

- (a) free expert industrial relations advice and representation;
- (b) free first-line legal advice and assistance;
- (c) free medical practice management advice and support;
- (d) enforcement of rights and entitlements; and
- (e) free advice on employment contracts.

In addition to the benefits above, AMA Victoria Members are also entitled to receive the following journals, publications and listings:

- (a) Medical Journal of Australia;

- (b) free listing with the online doctor directory, GPSearch/Victorian Medical Directory (VMD); ;
- (c) Australian Medicine;
- (d) DiT Member Update
- (e) Vicdoc, the monthly magazine of AMA Victoria; and
- (f) AMA List of Medical Services and Fees.

Membership of AMA Victoria is voluntary. As at the date of this application there are approximately 801 AMA Victoria Members in the affected categories.

Whilst the Proposed Offer could be interpreted as promoting MDANL as the 'premium' mutual medical defence organisation and MDANI as the 'premium provider' of professional indemnity insurance to AMA Victoria Members, AMA Victoria Members will not be required to become a member of MDANL or take up the offer of complimentary or discounted professional indemnity insurance with MDANI.

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)

Persons affected, or likely to be affected by the Proposed Offer are:

- (i) doctors who graduated within the last four to five years and who are working primarily as an employer indemnified doctor in a public hospital or private hospital or are enrolled in an initial specialist fellowship training program of an accredited Australasian/Australian College; and
- (ii) doctors who graduated more than five years ago and are enrolled in an initial specialist fellowship training program of an accredited Australasian/Australian College.

- (b) **Number of those persons:**

- (ii) At present time: approximately 656 Doctors in specialist training, 186 postgraduates in the PGY4 category and 145 in the PGY5 category (as referred to in paragraph (2) above) in Victoria.
- (iii) Estimated within the next year: Approximately 5% more than the number of persons at the present time.

- (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)

The likely public benefits of the Proposed Offer include the following:

- (i) increased range of member benefits offered by the AMA Victoria, which may in turn lead to increased or retained membership of the AMA Victoria due, in part, to the incentive of complimentary or discounted membership for AMA Victoria Members to MDANL, complimentary access to the MDA National Rewards Program and complimentary or discounted professional indemnity insurance with MDANI during the Offer Period;
- (ii) any increased or retained membership of the AMA Victoria may in turn lead to:
 - A. increased opportunity for an improvement of the professional standards of medical health in Australia and specifically, to heighten patient care and reduce potential risks to patients as a result of access to the services provided by the AMA Victoria, which include:
 - a. member access to a variety of literature/journals and publications;
 - b. member access to a variety of support services to the medical profession;
 - c. lobbying the government to improve laws relating to the medical profession or to the medical land associated sciences;
 - B. a minimisation of the adverse incidents occurring in the medical health industry and in turn reduce the likelihood of claims under an insurance policy;
- (iii) increased competitiveness in the medical indemnity insurance market; and
- (iv) provision of complimentary or discounted professional indemnity insurance premiums for AMA Victoria Members who are required to hold professional indemnity insurance in accordance with the Health Practitioner Regulation National Law as adopted within the jurisdiction in which they are registered to practice as a registered health practitioner, and who are not already covered by their employer's professional indemnity insurance arrangements, thus reducing the costs of professional practice.

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

The Applicants submit that the Proposed Offer will not have any anticompetitive effect and will not result in any public detriment. In any event, if there was any public detriment, it would be far outweighed by the benefits to the public as set out below.

- (i) Provision of discounted premiums

Section 129(1) of the Health Practitioner Regulation National Law ² provides that:

² The Health Practitioner Regulation National Law has been adopted throughout the States and Territories of Australia pursuant to the Health Practitioner Regulation National Law Act 2009 (Qld), the Health Practitioner Regulation National Law (NSW) No 86a, the Health Practitioner Regulation National Law (Victoria) Act 2009; the Health Practitioner Regulation National Law (ACT) Act 2010 (ACT); the Northern Territory Health Practitioner

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A registered health practitioner must not practise the health profession in which the practitioner is registered unless appropriate professional indemnity insurance arrangements are in force in relation to the practitioner's practice of the profession.

AMA Victoria Members, with the exception of final year medical students registered as students with their educational institution, would fall within the definition of 'health practitioner' for the purposes of the Health Practitioner Regulation National Law, and accordingly, if not already covered by their employer's professional indemnity insurance arrangements, would be required by the Health Practitioner Regulation National Law as adopted in the jurisdiction in which they practice to hold professional indemnity insurance.

- (ii) Access to services and benefits offered as part of membership of the AMA Victoria

The services which are provided by the AMA Victoria, as well as the Applicants, are a means of improving the quality of patient care and improving service quality and delivery, and accordingly, members having access to these services and benefits will potentially benefit the public at large.

- (iii) Incentive to membership with AMA Victoria

Providing complimentary or discounted membership to MDANL and professional indemnity insurance to AMA Victoria Members during the Offer Period acts as an incentive to become or remain a member of the AMA Victoria, and as a result increases the number of medical professionals who have access to the services provided to AMA Victoria Members. The member services and benefits offered by the AMA Victoria have the ultimate aims of improving professional standards within the medical industry and the quality of care provided to patients.

- (iv) Public benefit from professional indemnity insurance

Professional indemnity insurance in itself is a benefit to the public as it ensures that in a situation where there has been some malpractice by a medical professional, the member of the public who has suffered will be duly compensated.

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)

The Applicants submit that the market affected by the Proposed Offer would be the market for medical professional indemnity insurance in Australia.

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 Applicants submit that there will be no public detriment resulting from the Proposed Offer.

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

Please refer to 4(a) and (b) 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:

Jackson McDonald
Attention: Rachel Webber
Level 17, 225 St Georges Terrace
PERTH WA 6000

Dated... 19 August 2015

Signed on behalf of MDA National Limited

Ian Anderson
.....
(Signature)

Ian Bruce Anderson
.....
(Full Name)

MDA National Limited
.....
(Organisation)

chief Executive officer
.....
(Position in Organisation)

Signed on behalf of MDA National Insurance Pty Ltd

Ian Anderson
.....
(Signature)

Ian Bruce Anderson
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