



## Motor Trades Association of Australia

Commissioner Robert Fitzgerald  
Presiding Commissioner  
Smash Repair Inquiry  
Productivity Commission  
PO Box 80  
Belconnen ACT 2616  
email: smashrepair@pc.gov.au

Dear Commissioner Fitzgerald

MTAA has noted with interest that IAG has lodged a notification of exclusive dealing conduct with the Australian Competition and Consumer Commission in relation to a new two-tier pricing offering for vehicle insurance it proposes to put into the market if the ACCC has no objections to its terms (copy attached).

MTAA believes that the terms and character of the proposal in the notification should be of central interest to the Commission's Smash Repair Inquiry.

In response we offer as a supplementary submission to your Inquiry a commentary upon the central aspects of this notification, and change in product offering, from the MTAA's perspective in addition to our submission of 15 October 2004.

### **Overview**

IAG has lodged a notification of exclusive dealing conduct to permit it to offer a two-tier pricing structure relating to vehicle insurance. This change will involve a higher premium cost for policyholders wanting to have a right to choice of repairer, while standard policyholders will remain on the current premiums. The argument IAG has advanced for seeking this authorisation is, it says, to promote the option of choice in relation to insurance products and repairers and so as to remove what it claims are pre-existing "cross-subsidies" in the system where those who do not exercise choice pay for those that do. We do not accept that reasoning or that it is the case that there is a "cross-subsidy".

### **Discussion**

There are two key aspects of IAG's notification that are of particular concern to MTAA and these aspects are detailed below.

*The Choice of Repairer policy on offer does not really offer choice*

IAG, in its notification, is proposing to establish two distinct product offerings for vehicle insurance; the first is a standard policy; where when a claim is made by the policyholder the insured's rights are subrogated to the insurer. The second product is a so-called "Choice of Repairer" Policy; where when a claim is made the policyholder designates their repairer of choice. This product carries an extra premium above that of the standard policy, for example material sighted by MTAA indicates that the increased cost for this policy in Western Australia is \$40 per vehicle.

On the face of it, it would appear to be a sensible approach to offer consumers a broader range of policies from which to select. However when considering the detail of the notification, in particular how IAG intends the Choice of Repairer Policy to operate (under sections 4.4 and 4.5 of the notification), serious questions are raised about the real, and actual, level of choice in this policy. In these two sections IAG identifies that where the policyholder has elected the Choice of Repairer Policy, the insurer will not recommend or suggest a repairer unless asked to by the insured and the insured may select any properly qualified and licensed smash repairer. The concerning section is in the following paragraph where IAG identifies that "[i]f IAG does not authorise or cannot agree [to] the quote it will be settled with the insured for the reasonable cost of repair or replacement of the vehicle or [the] use [of] one of the other cash settlement options...". This indicates that while policyholders have the freedom to nominate their repairer, there is no obligation for IAG to accept the quote from that repairer such that the insured may exercise and enjoy the fruit of that choice. However, nowhere in the document does IAG identify the criteria on which it may reject a quotation. To that extent the present deception over choice in the market which is the product of intended non-disclosure is magnified and made the more injurious.

Consequently, consumers opting for the Choice of Repairer Policy may be further financially disadvantaged by IAG insurers paying out the claim at a lesser cost rather than the full cost of repairs at their repairer of choice. There is no description of how IAG intends to make a determination on this matter. It could simply be that the insurer decides that unless the independent repairer undertakes the work at the price of preferred repairers, then IAG insurers will pay out the cost of repairs; leaving the insured to either make up the difference, or shift back to the insurer's preferred smash repairer scheme. A clear definition of the basis on which IAG insurers will either accept or reject quotations must be mandatory in this scheme in order to provide more certainty for those choosing this policy option.

Further, the wording of the Choice of Repairer Policy is almost identical to the previous policy statement in terms of accepting or rejecting quotations from independent repairers. In the prevailing present policy statement, IAG states that if the insured chooses to repair its motor vehicle at a repairer not nominated by the insurer, the insurer will decide whether to:

- pay what it would have cost the insurer to repair the vehicle at one of its preferred repairers or repair management centres; or
- pay the insured the fair and reasonable cost to repair the vehicle at the insured's nominated repairer; or
- authorise and pay for the fair and reasonable cost of repairs at the insured's nominated repairer.

If this is really a substantially different product offering it must, for the avoidance of being misreading and deceptive, provide substantially different terms of operations.

*LAG's two-tiered pricing system*

MTAA could support the concept of a two-tiered pricing system as a method to provide more policy options for consumers were the concept truly offered and achieved. IAG's policy proposes an extra premium for consumers opting for the Choice of Repairer Policy. IAG has stated that its rationale for the increased premium attached to the Choice of Repairer Policy is as a result of what it says would be the increased costs of using independent repairers.

Through its preferred repairer scheme, IAG has been responsible for setting extremely low hourly labour and paint rates for participating repairers. Furthermore, while costs of labour and paint are continually rising, MTAA has sighted evidence of where IAG has not adjusted its rates since 1991. On the basis that preferred repairers are receiving about the same or less than their business input costs, in some ongoing, it is little wonder that independent repairers are more expensive, as they are likely to set their prices to reflect the real input costs of doing business. However, MTAA is not aware of any evidence, either anecdotal or otherwise, indicating that independent repairers are any more expensive than either preferred or associate smash repairers and in fact may even be cheaper in some circumstances for the same quality of repair and restoration.

IAG argues that cross-subsidies currently exists between those who subrogate their rights and those who choose their own repairer, as the cost of repairs at independent repairers is greater than the cost from within the preferred smash repairer network. MTAA finds this argument difficult to believe as under the present, prevailing policy document it is clearly stated (as described above) that the insurer will only pay what it would have cost the insurer to repair the car or the fair and reasonable costs. MTAA has not sighted any evidence from IAG that it is incurring any extra costs as a result of policyholders using an independent repairer and if no evidence is presented to justify this claim, MTAA can only assume that the cross-subsidising does not exist. In any case, in both cases it says it will only pay the same for both 'policies' and their benefits.

Historically, consumers had choice of repairer at no extra cost; although this entailed greater effort, information and transaction costs on the part of the insured. Since the introduction of preferred smash repairer schemes, insurers have been subtly reducing or removing the insured's right to choose their repairer; but as this choice has been withdrawn premiums have not declined. Now, IAG is purportedly intending to restore choice to consumers but only if they pay more for it. MTAA believes that noting there was no reduction in premiums to reflect the loss of choice as IAG shifted to a preferred smash repairer scheme, it must be economically more appropriate now to reduce the premiums for the Standard Policy and maintain the current premiums for the Choice of Repairer Policy.

**MTAA position**

In considering this notification, MTAA has reviewed its current and previous positions on this matter and believes that:

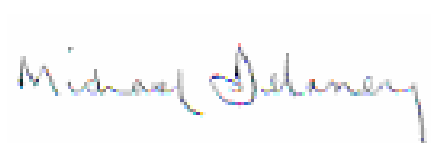
- IAG must clarify the circumstances in which it would reject a quotation from an independent repairer. This information is necessary to provide consumers with adequate knowledge of the policy and to avoid unreasonable costs being burdened

on them when a claim is made. This information should be provided in clear English and be conveyed to consumers at the time of advice of the policy offering available.

- MTAA does not believe that it is appropriate that IAG remove the insured's present contractual option of choice of repairer and then be permitted to charge them more for such a choice under a new policy offering. Rather IAG should reduce the premiums of those policyholders who choose to subrogate their rights while holding premiums at the same level for those wanting choice of repairer. IAG has presented no evidence that customer choice of repairer results in an increase in cost. Therefore there is no justification to increase the premium attached to this policy, other than to discourage the uptake of this policy.

MTAA trusts that this advising is helpful to the Commission. If you have any questions regarding the detail of this letter, please do not hesitate to contact me on phone (02) 6273 4333.

Yours sincerely

A handwritten signature in blue ink that reads "Michael Delaney". The signature is written in a cursive, flowing style.

**Michael Delaney**  
Executive Director

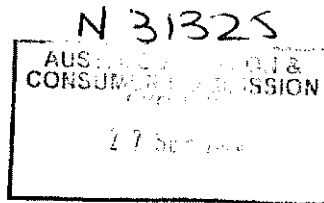
03 November 2004

# BLAKE DAWSON WALDRON

L A W Y E R S

Mr Tim Grimwade  
General Manager  
Adjudication Branch  
ACCC  
Level 7  
123 Pitt Street  
SYDNEY NSW 2000

Dear Mr Grimwade



FILE No:

DOC:

MARS/PRISM:

## Form G Notification of Exclusive Dealing Conduct

We enclose a form G Notification of Third Line Forcing Conduct with accompanying submissions on behalf of the following entities in the Insurance Australia Group.

- (a) Insurance Manufacturers of Australia Pty Limited;
- (b) Insurance Australia Limited;
- (c) SGIO Insurance Limited; and
- (d) SGIC General Insurance Limited.

We also enclose a cheque in the amount of \$1,500 comprising filing fees for one Pty Limited company (\$100), one Limited company (\$1,000) and two further Limited companies at the concessional rate of \$200 per company. These amounts were confirmed to us today by the ACCC Infocentre.

If you have any queries, please do not hesitate to contact Ian Wylie on (02) 9258 5971.

Yours faithfully

Level 36  
Grosvenor Place  
225 George Street  
Sydney NSW 2000

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Tel + 61 2 9258 6000  
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DX 355 Sydney

Locked Bag N6  
Sydney NSW 1225  
Australia

**Partner**  
Ian Wylie  
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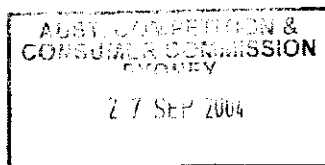
**Contact**  
Rachael Doland  
Telephone (02) 9258 6590

**Our reference**  
ISW.RLD.02-1366-1734

27 September 2004

SYDNEY  
MELBOURNE  
BRISBANE  
PERTH  
CANBERRA  
LONDON  
PORT MORESBY  
JAKARTA  
SHANGHAI

112541042



N31325

FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Sub-section 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-sections 47(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

## 1. (a) Name of person giving notice:

Insurance Manufacturers of Australia Pty Limited ABN 93 004 208 084, Insurance Australia Limited ABN 11 000 016 722 (formerly NRMA Insurance Limited), SGIO Insurance Limited ABN 30 058 277 866, and SGIC General Insurance Limited ABN 68 069 065 158 (collectively, the **IAG Insurers**)

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

General insurance services, including comprehensive motor vehicle and motor cycle insurance, third party property damage insurance for motor vehicles and motor cycles, on-site caravan insurance, touring caravan or trailer insurance, compulsory third party insurance, fleet insurance, transport accident insurance, home buildings insurance, home contents insurance, personal effects insurance, strata titles insurance, and boat insurance.

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

Ian Wylie  
Partner  
Blake Dawson Waldron  
Level 35, Grosvenor Place  
225 George Street  
Sydney NSW 2000  
Ref: ISW.RLD.02-1366-7734

DX 355 Sydney

Facsimile: (02) 9258 6999

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

Please see attached submissions.

2.

**(b) Description of the conduct or proposed conduct:**

Please see attached submissions.

3. **(a) Class or classes of persons to which the conduct relates:**

Customers who hold comprehensive motor vehicle insurance with the IAG Insurers.

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

Please see Confidential Annexure D to the attached submissions.

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

N/A

4. **Name and address of persons authorised by the person giving this notice to provide additional information in relation to this notice.**

Ian Wylie  
Partner  
Blake Dawson Waldron  
Level 35, Grosvenor Place  
225 George Street  
Sydney NSW 2000  
Ref: ISW.RLD.02-1366-1734

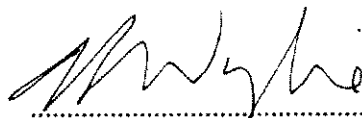
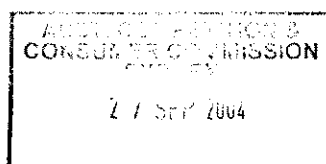
DX 355 Sydney

Telephone: (02) 9258 6000  
Facsimile: (02) 9258 6999

Dated: 27 September 2004

Signed on behalf of the person giving this notice

N 31325.



Ian Stuart Wylie  
Partner, Blake Dawson Waldron

## DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
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. In item 1 (b), 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 subsection 47 (2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3 (b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

## NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47 (6) or (7), or paragraph 47 (8) (c) or (9) (d), of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93 (7A) of the Act ("the prescribed period") unless the Commission gives a notice under subsection 93A (2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A (2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93 (3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47 (2), (3), (4) or (5), or paragraph 47 (8) (a) or (b) or (9) (a), (b) or (c), of the Act, it comes into force when it is given.



**SUBMISSIONS IN SUPPORT OF NOTIFICATION OF EXCLUSIVE DEALING  
LODGED ON BEHALF OF THE IAG INSURERS**

**1. NOTIFICATION**

- 1.1 These submissions are provided to the Australian Competition and Consumer Commission (**Commission**) in support of notifications of exclusive dealing lodged by the IAG Insurers (as defined in paragraph 3.1 below).

**2. CONFIDENTIALITY**

- 2.1 The estimated market shares in Confidential Annexure A are confidential and commercially sensitive. The IAG Insurers request that the Commission treat the information in Annexure A as confidential and that it be excluded from the public register on confidentiality grounds.
- 2.2 The NRMA Insurance Product Disclosure Statement and Policy wording booklet which is Confidential Annexure B will not be publicly available to customers until after 10 October 2004. The IAG Insurers request that the Commission treat the information as confidential and that it be excluded from the public register on confidentiality grounds until 10 October 2004.
- 2.3 The details of the number of PSRs and ASRs by State in Confidential Annexure C are confidential and commercially sensitive. The IAG Insurers request that the Commission treat the information in Annexure C as confidential and that it be excluded from the public register on confidentiality grounds.
- 2.4 The current number of comprehensive motor vehicle insurance policies in force for each of the IAG Insurers (defined in paragraph 3.1 below) in Confidential Annexure D is confidential and commercially sensitive. The IAG Insurers request that the Commission treat the information in Annexure D as confidential and that it be excluded from the public register on confidentiality grounds.

**3. BACKGROUND**

- 3.1 Insurance Manufacturers of Australia Pty Limited ABN 93 004 208 084 (**IMA**), Insurance Australia Limited ABN 11 000 016 722 (formerly NRMA Insurance Limited) (**NRMA Insurance**), SGIO Insurance Limited ABN 30 058 277 866 and SGIC General Insurance Limited ABN 68 069 065 158, (collectively, the **IAG Insurers**) are members of the Insurance Australia Group Limited group of companies (**IAG Group**).
- 3.2 As a part of its business operations, each of the IAG Insurers issues motor vehicle comprehensive insurance policies. Confidential Annexure A sets out the estimated share of comprehensive motor vehicle policies issued each year in each State represented by the IAG Insurers.
- 3.3 The IAG Insurers (other than IMA) have appointed IMA to provide them with management services with respect to claims and assessing under their insurance policies. Management services with respect to claims and assessing include providing claim lodgement services, assessing whether the policyholder is entitled to make a claim under

the policy and, if yes, settling the claim by repairing or replacing the vehicle or making a payment to the policyholder in accordance with the terms of the policy.

3.4 Under the current terms of the insurance policies issued by the IAG Insurers, where an insured vehicle is damaged and the policyholder is entitled to and does make a claim, the IAG Insurer will be liable to:

- repair the vehicle at its expense; or
- indemnify the policyholder for the fair and reasonable cost of repairing the vehicle; or
- if the vehicle is unable to be repaired, or the cost of repair exceeds the agreed/market value of the vehicle specified in the policy, replace the vehicle or pay the policyholder the agreed/market value of the vehicle.

3.5 The IAG Insurers maintain a network of repairers who have been appointed to undertake smash repair work for the IAG Insurers. Repairers may be appointed as either a Preferred Smash Repairer (PSR) or an Associate Smash Repairer (ASR). The IAG Insurers will give preference to PSRs over ASRs in the allocation of work, but, with respect to the matters relevant to this notice, the two categories of repairers are otherwise identical.

3.6 The IAG Insurers select repairers to offer to appoint as PSRs and ASRs on the following criteria:

- quality of repair work;
- cost competitiveness;
- customer service; and
- the business needs of the IAG Insurers.

3.7 Under the current terms of the comprehensive motor vehicle policies issued by the IAG Insurers, where customers do not request a particular repairer, the IAG Insurers recommend to policyholders that repairs be carried out by a PSR or ASR. Where repairs are carried out by a PSR or ASR, the IAG Insurer engages the repairer to undertake the repairs for it, and then provides the insured with a repaired vehicle. If the policyholder chooses to have his, her or its vehicle repaired by a repairer other than a PSR or ASR, the IAG Insurer pays the policyholder an amount for the fair and reasonable cost of repairing the vehicle. It is the responsibility of the policyholder in this case to organise and authorise the repair of the vehicle.

#### 4. NOTIFIED CONDUCT

4.1 Each of the IAG Insurers proposes now or in the future to issue a new version of the comprehensive motor vehicle insurance policy. Each of the IAG Insurers proposes now or in the future to issue a new standard form policy (**Standard Policy**). Some of the features of the Standard Policy are described more fully below. Very briefly, however, under a Standard Policy the IAG Insurer, and not the policyholder, will be responsible for choosing and engaging a repairer when the vehicle is repaired under the policy. At the time of taking out the policy, however, the policyholder will have the option of paying an

extra premium to have the right to select a repairer in the event the vehicle is repaired under the policy. In these submissions, a policy under which the policyholder has elected to take this option is referred to as a **Choice of Repairer Policy**. Except for the differences described below, the Standard Policy and the Choice of Repairer Policy are relevantly identical.

- 4.2 Confidential Annexure B is a copy of the Product Disclosure Statement and Policy Wording booklet for the new comprehensive motor vehicle insurance policy to be issued by NRMA Insurance. The terms of the policies to be issued by the other IAG Insurers are relevantly identical.

#### **Standard Policy**

- 4.3 Under the terms of the Standard Policy, when a claim is made and the IAG Insurer decides to have the vehicle repaired, the insured will not have a right to nominate the repairer to undertake the repairs. Instead, which repairer will repair the vehicle will be at the sole discretion of the IAG Insurer. The IAG Insurers propose to select a repairer in these circumstances from the pool of PSRs and (if no suitable PSR is available) ASRs. In WA, SA & QLD Metropolitan Areas, this may involve the insured attending a Repair Management Centre. Once the IAG Insurer has determined the repairer to repair the vehicle, the IAG Insurer will organise for the vehicle to be towed to the repairer or ask the insured to deliver the vehicle to the repairer, as appropriate. The IAG Insurer will ask the repairer to provide the IAG Insurer with a quote for the repair of the vehicle. Once the IAG Insurer and the repairer have agreed on the amount of the quote, the IAG Insurer will engage the repairer to repair the vehicle. The IAG Insurer will pay the repairer directly for the repair work. If IAG does not authorise the repairs it may cash settle with the insured for the reasonable cost of repair or replacement of the vehicle.

#### **Choice of Repairer Policy**

- 4.4 Under the terms of the Choice of Repairer Policy, the insured, and not the IAG Insurer, selects the repairer to undertake repairs to the vehicle. When a claim is made and the IAG Insurer decides to have the vehicle repaired, the IAG Insurer will ask the insured to nominate the repairer to undertake the repairs. The IAG Insurer will not recommend or suggest a repairer unless the insured requests the assistance of the IAG Insurer in nominating a repairer. The insured may select any properly qualified and licensed smash repairer within a reasonable distance of the location of the vehicle to undertake the repair work, whether or not that repairer is a PSR or ASR.
- 4.5 Once the insured has selected a repairer, the IAG Insurer will organise for the vehicle to be towed to the repairer or ask the insured to deliver the vehicle to the repairer, as appropriate. The IAG Insurer will then ask the repairer to provide the IAG Insurer with a quote for the repair of the vehicle. Once the IAG Insurer and the repairer have agreed on the amount of the quote, the IAG Insurer will engage the repairer to repair the vehicle. The IAG Insurer will pay the repairer directly for the repair work. If IAG does not authorise or cannot agree the quote it will cash settle with the insured for the reasonable cost of repair or replacement of the vehicle or use one of the other cash settlement options for the relevant incident as described in pages 6 to 15 of the Product Disclosure Statement.
- 4.6 An insured will be able to take out a Choice of Repairer Policy by agreeing, at the time of entering the insurance contract, to pay an additional amount of premium over the base premium applicable to the Standard Policy. The reason for the extra premium is to offset

the additional cost to the IAG Insurers of providing the policyholder with a choice of repairer (see further paragraph [5.7]). It is the intention of the IAG Insurers to set the amount of the extra premium to reflect costs and risk so that, from a profitability perspective, the IAG Insurers are indifferent as to whether an insured takes out a Standard Policy or Choice of Repairer Policy.

- 4.7 Apart from the additional premium, there will be no other expense to insureds as a result of taking out the Choice of Repairer Policy rather than the Standard Policy. For example, there will be no differential treatment of insureds under the Standard and Choice of Repairer Policies with respect to excesses or no claim discounts.

### Third line forcing

- 4.8 It is the view of the IAG Insurers that the notified conduct described above does not constitute conduct within the meaning of sections 47(6) or 47(7) of the *Trade Practices Act 1974* (Cth) (TPA). This is because (amongst other things) where, under the Standard Policy, a PSR or ASR repairs the vehicle, the services of the PSR or ASR are acquired by the IAG Insurer, not the policyholder. The PSR or ASR undertakes the repair work for the IAG Insurer; the IAG Insurer is liable to the PSR or ASR for the cost of the repairs. The policyholder in turn acquires a repaired vehicle from the IAG Insurer. It is the view of the IAG Insurers that the IAG Insurers are not providing any good or service, or offering any discount, allowance, rebate or credit in relation to the supply or proposed supply of any goods or services, on condition that the policyholder also acquires goods or services from a repairer. Instead, the policyholder acquires goods and services only from the IAG Insurer.
- 4.9 Notwithstanding the view of the IAG Insurers outlined in the previous paragraph, the IAG Insurers lodge these notifications for the avoidance of doubt.

## 5. PUBLIC BENEFITS OF THE PROPOSED CONDUCT

- 5.1 The proposed conduct is likely to enhance efficiency and consumer choice in the motor vehicle insurance and smash repair markets. The IAG Insurers refer to the following extract from an ACCC Issues Paper<sup>1</sup> which notes that Repairer Groups have been calling for a two tier pricing system (to which the Choice of Repairer policy option responds):

*"Repairer groups have called for consideration of a two tier pricing system. This price system will offer consumers the choice of paying two separate prices for motor vehicle insurance. One price will enable the consumer to choose any repairer to perform insurance related repairs to the vehicle. The other price will enable the consumer to go through the insurers normal method which may or may not include a preferred repairer scheme. Insurers believe that if this system were to be introduced then the policy which enables full choice will be more expensive."*

- 5.2 Most policyholders, in contrast to the IAG Insurers, are not regular consumers of smash repair services. They are, therefore, generally not well-informed consumers of smash repair services. Given the cost of acquiring information, as infrequent consumers there is unlikely to be an incentive for policyholders to become well-informed. In particular, as

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<sup>1</sup> Discussion on the relationship between the Australian motor body/smash repair industry and the general insurance sector, Issues Paper, September 2003, Australian Competition & Consumer Commission at p17.

under a policy of insurance the cost of the repair will be borne by the insurer and not the policyholder, there is little incentive for the policyholder to take any steps to minimise the cost of repair. As a result, where the insured has the choice of repairer, the average cost of repair is likely to be above the competitive level. Higher repair costs, all else equal, will in turn result in higher insurance premiums.

- 5.3 More generally, the asymmetry of information between the policyholders as consumers and the suppliers is likely to cause market inefficiencies. It allows inefficient suppliers, who would exit the market or take steps to become more efficient but for the information asymmetry, to remain in the market. This has implications for both the productive and allocative efficiency of the smash repair market.
- 5.4 The Standard Policy allows policyholders to take advantage of the IAG Insurers' market knowledge and scale efficiencies. Policyholders get the benefit both in the quality of repair and customer service received, and in the form of premiums being lower than they otherwise would be (see further paragraph [5.10]).
- 5.5 The IAG Insurers are frequent and comparatively well-informed purchasers of smash repair services. The motivation of the IAG Insurers in establishing the PSR and ASR programs was to realise improvements in customer service and repair quality and reduce average repair costs by using their knowledge of the smash repair market to identify those repairers who performed high quality work at a competitive cost, and then deal primarily with those repairers.
- 5.6 The experience of the IAG Insurers is that the average cost of repairs undertaken by PSRs is lower than the average cost of repairs undertaken by other repairers.
- 5.7 However, the IAG Insurers recognise that some policyholders place significant value on the right to choose which repairer will undertake repairs to their vehicle. Giving this right to policyholders creates additional costs for the IAG Insurers. These costs include:
  - (a) higher average repair costs – as discussed at paragraphs [5.2 and 5.6], the average cost of repairs undertaken by non-PSR repairers exceeds the average for PSRs;
  - (b) increased operational costs (including towing costs) associated with the IAG Insurers having to deal with a larger number of repairers, some of whom the IAG Insurers deal with only occasionally.
- 5.8 Under the current system, these costs are borne equally by all policyholders, whether or not they value the right to choose a repairer. Policyholders who actively wish to select a repairer do not pay any added premium or higher excess. In short, policyholders who, if given a choice would not pay to have a right to select a repairer (because the value to them of such a right is less than its true cost) are cross-subsidising those policyholders for whom the value of the choice is greater than or equal to its true cost.
- 5.9 A significant advantage of the new policy is that it removes the cross-subsidy referred to in the preceding paragraph and allocates the cost of having a choice of repairer to those policyholders who value the right to have such choice at or above its cost.

#### Cost savings passed on to policyholders

- 5.10 The IAG Insurers face significant competition in the market to supply motor vehicle insurance. The IAG Insurers regard the market for motor vehicle insurance to be a

national market, as evidenced by most of the insurance groups having a presence in more than one State. Even if the view is taken that there is a separate market in each State and Territory, Confidential Annexure A demonstrates that the IAG Insurers face significant competition in each market.<sup>2</sup> A consequence of the competition faced by the IAG Insurers is that lower repair and other claim costs result in premiums being lower than they would be in the presence of higher repair and other claim costs.

## 6. EFFECT OF THE NOTIFIED CONDUCT ON COMPETITION

6.1 The IAG Insurers submit that the notified conduct will not have any detrimental effect on competition in any market. The IAG Insurers make this submission for at least the following reasons.

- (a) Policyholders who value a right of choice of repairer will be able to obtain such a right when taking out the policy by paying an extra premium amount, in circumstances where the extra premium is calculated to cover the additional costs associated with policyholder repairer choice.
- (b) The IAG Insurers do not prevent PSRs or ASRs from working for other insurance companies or individual customers. Also, a PSR or ASR may terminate its PSR or ASR Agreement without reason on 7 days' notice. Therefore, the notified conduct does not prevent other purchasers of smash repair services from obtaining access to the PSRs and ASRs.
- (c) There are a significant number of PSRs and ASRs within the IAG Insurer repairer network. Confidential Annexure C lists the current number of PSRs and ASRs in each State.
- (d) A repairer, once appointed as a PSR or ASR, is not guaranteed to retain that status. PSR and ASR agreements generally have a duration of one year only, and the IAG Insurers assess each year whether or not to offer a PSR or ASR a new contract on the expiry of the existing contract. Specifically:
  - (i) the IAG Insurers actively monitor the quality, cost competitiveness and customer service of repair work undertaken for them by PSRs and ASRs. The IAG Insurers may terminate a PSR or ASR agreement on 90 or 30 days' notice respectively, or on shorter notice if the repairer has breached certain clauses of the agreement or has failed to maintain the requisite standards of repair quality, cost competitiveness and customer service;
  - (ii) the IAG Insurers are free at any time to appoint further PSRs or ASRs in any area where the business need arises. Repairers that are not currently part of the PSR program always have the opportunity of being appointed as a PSR or ASR by demonstrating to the IAG Insurers that they are able to provide smash repair services of the requisite quality at a competitive cost.

A PSR or ASR is, therefore, still subject to competitive forces to retain its status.

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<sup>2</sup> The Commission has previously stated that it regards the market for domestic vehicle insurance to be competitive; see the Commission's *Insurance Industry Market Pricing Review* (March 2002) and ACCC media release "ACCC not to oppose IAG acquisition of Aviva's CGU Insurance", 28 November 2002.

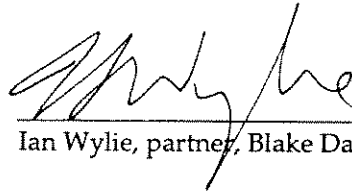
- (e) The conduct will only apply in relation to smash repairs effected under policies issued by the IAG Insurers. Confidential Annexure D sets out the current number of comprehensive motor vehicle insurance policies in force for the IAG Insurers.
- (f) Policies last only one year and a policyholder may easily switch to other insurers at the expiration of this period. Alternatively they may cancel their policy at any time entitling them to a refund less any cancellation fee.

**7. CONCLUSION**

- 7.1 The IAG Insurers submit that the notified conduct does not involve any anti-competitive detriment. In any event for the reasons outlined above any perceived detriment will be substantially outweighed by the likely benefit to the public from the notified conduct. The IAG Insurers accordingly submit that the notified conduct satisfies the requirements of section 93 of the TPA and that the notifications should be allowed to stand.

**DATE:** 27 September 2004

**SIGNED** on behalf of the IAG Insurers:



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Ian Wylie, partner, Blake Dawson Waldron