

Enforceable Undertaking

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission ("ASIC") by:

NRMA Insurance Limited ("NRMA Insurance")
(ACN 000 016 722)
Level 21
NRMA Centre
388 George Street
SYDNEY NSW 2000



RACV Sales and Marketing Pty Ltd ("RACV")
(ACN 005 258 702)
123 Queen Street
MELBOURNE VIC 3000

Insurance Manufacturers of Australia Pty Limited ("IMA")
(ACN 004 208 084)
Level 21
NRMA Centre
388 George Street
SYDNEY NSW 2000

Background

- 1.1 ASIC has conducted an investigation into suspected contraventions of the *Australian Securities and Investments Commission Act 2001* ("ASIC Act") arising out of statements made in comprehensive motor vehicle insurance policy documentation underwritten by IMA and offered by RACV as agent for IMA. The policy documentation was sent by NRMA Insurance to holders of NRMA Insurance motor vehicle insurance policies due from October 2000 under cover of a letter advising NRMA Insurance would no longer be offering insurance in Victoria and inviting the policyholders to consider the offer of RACV/IMA. ASIC suspected that certain statements made in that documentation may have misled policyholders.

- 1.2 It is common ground, after inquiry by ASIC, that :
- (a) IMA was established on 2 December 1999 ("**Commencement Date**") as a joint venture between the NRMA Insurance group and the RACV group.
 - (b) The NRMA Insurance group and the RACV Sales & Marketing Pty Limited ("**RACV**") group own 70% and 30% of this issued shares in IMA respectively.
 - (c) The consequences of the joint venture between the NRMA Insurance group and the RACV group and the establishment of IMA, were that:
 - (i) NRMA Insurance would no longer renew comprehensive motor vehicle policies ("**NRMA Insurance Policy**") for policyholders in Victoria.
 - (ii) RACV, as agent for IMA, would offer these policyholders a comprehensive motor vehicle policy underwritten by IMA ("**RACV Branded - IMA Policy**").
- 1.3 From 8 October 2000, in the case of any NRMA Insurance Policy falling due for renewal, NRMA Insurance wrote to these policyholders encouraging them to take up an offer of an RACV Branded - IMA Policy and enclosed RACV Branded - IMA Policy documentation.
- 1.4 ASIC is concerned that the RACV Branded - IMA Policy documentation sent to these policyholders was or may have been misleading because it stated in substance that policyholders who had held the equivalent of a rating 1 with NRMA Insurance for three years without making a claim, had paid for rating protection at the time the offer of motor vehicle insurance contained in an RACV Branded - IMA Policy was made to them and who accepted that offer of motor vehicle insurance ("**Protected Rating 1 Policyholders**") would receive free rating protection.
- 1.5 Despite this statement Protected Rating 1 Policyholders were not offered free rating protection, and the premium they were charged in respect of the RACV Branded - IMA Policy included a charge for rating protection.
- 1.6 Between October 2000 and 3 June 2001, at least 29,265 Protected Rating 1 Policyholders accepted invitations to insure in respect of RACV Branded - IMA Policies in circumstances where the premium specified included a charge for rating protection.

- 1.7 Of the 29,265 Protected Rating 1 Policyholders:
- a) policyholders accepted the offer from RACV (acting on behalf of IMA) and paid for rating protection.
 - b) The remaining 14,431 policyholders had their premium adjusted by being given free rating protection.
- 1.8 ASIC is concerned that each of IMA, RACV and NRMA Insurance may have contravened or been a party to the contravention of section 12DA (misleading and deceptive conduct) of the ASIC Act by reason of the facts set out in paragraph 1.3 to 1.6.
- 1.9 IMA, RACV and NRMA Insurance acknowledge ASIC's concerns but do not believe that the wording was misleading by reason of the following:
- (a) IMA decided:-
 - (i) To adjust premiums in Victoria over time to achieve equality of the products offered as between former NRMA Insurance policyholders in Victoria immediately prior to the Commencement Date ("former NRMA Insurance policyholders") and RACV policyholders in Victoria at that date.
 - (ii) To set premiums at economically viable levels.
 - (iii) Not to provide free rating protection to former NRMA Insurance policyholders as to do so would be inconsistent with moving to the equality in product offerings between the above mentioned Victorian policyholders.
 - (b) IMA intended the RACV Branded - IMA Policy to reflect its decision not to provide free rating protection (as set out in paragraph 1.9(a)(iii)) and considers that it did so.
 - (c) The RACV Branded - IMA Policy refers to the issue of rating protection in a number of places, and, when those references are read as a whole, the policy documentation is accordingly not misleading.
- 1.10 In April 2001, IMA decided to offer free rating protection to Protected Rating 1 Policyholders as their policies fell due for renewal from 3 June 2001 provided in the preceding three years they paid for rating protection at the time their policies fell due for renewal and had made no claims during that period.
- 1.11 In September 2001, in the interests of customers, IMA, RACV and NRMA Insurance decided, in light of the concerns raised by ASIC and some policyholders, to refund to the Protected Rating 1 Policyholders referred to in paragraph 1.7(a) the amount paid by them to RACV as agent for IMA for rating protection. The total of the amounts paid by these Protected Rating 1 Policyholders for rating protection is approximately \$1,500,000. Payment of

the refunds commenced on 19 December 2001. All refunds are expected to have been made by 16 January 2002.

- 1.12 ASIC has the power to apply to the Court and to seek the following relief in relation to that conduct:
- a) Declarations that the conduct contravened the ASIC Act and injunctions restraining that conduct (section 12GD of the ASIC Act).
 - b) Orders that IMA disclose specified information to policyholders (section 12GE of the ASIC Act).
 - c) Compensation for policyholders (section 12GM of the ASIC Act).
- 1.13 ASIC has agreed to accept this enforceable undertaking as an alternative to seeking the relief outlined in paragraph 1.12.

2. Undertakings

Pursuant to section 93AA of the ASIC Act, each of IMA, RACV and NRMA Insurance undertake as follows:

- 2.1 IMA will ensure that all invitations to insure RACV Branded comprehensive car insurance issued from 1 July 2002 separately identify the amount charged for rating protection.
- 2.2 In relation to each Protected Rating 1 Policyholder who paid RACV, as agent for IMA, for rating protection and has not been reimbursed for that payment for rating protection ("the Affected Policyholders"):
- a) Subject to 2.2(b), IMA will refund to each Affected Policyholder any amount paid by them for rating protection within 28 days from date of this enforceable undertaking.
 - b) In the case of any Affected Policyholder for whom IMA, RACV or NRMA do not possess a current address or other means to contact them, IMA will be taken to have complied with 2.2(a) if IMA uses its best endeavours to locate that Affected Policyholder and to refund the amount paid by them for free rating protection.
- 2.3 RACV will send to each Affected Policyholder a letter in the form of the draft letter marked annexure "A" attached to this enforceable undertaking not later than 28 days from date of this enforceable undertaking.

- 2.4 For the purposes of clauses 2.2, Protected Rating 1 Policyholders are entitled to free rating protection if, immediately prior to accepting an offer of insurance contained in an RACV Branded - IMA Policy, they had held a 60% No Claim Bonus with NRMA Insurance for at least 3 years, had paid for rating protection immediately prior to the offer of motor vehicle insurance contained in an RACV Branded - IMA Policy made to them, and had made no claims for 3 years.
- 2.5 RACV and NRMA Insurance will do all things necessary to ensure compliance by IMA with its obligations in paragraphs 2.1 and 2.2.
- 2.6 Not later than 28 days from date of this enforceable undertaking, IMA will cause its auditor ("the Auditor") to review the steps undertaken by IMA under paragraphs 2.2 and 2.3 and report in writing to ASIC, the Compliance Committee of each of IMA, RACV and NRMA Insurance ("Compliance Report"). The Compliance Report must say whether paragraph 2.2 of this undertaking has been complied with, and in particular, whether:
- a) all Protected Rating 1 Policyholders have been identified; and
 - b) the monies paid by each Protected Rating 1 Policyholder for rating protection have been properly identified, quantified, and repaid.
- 2.7 IMA will:
- a) Allow the Auditor to have access to the books of IMA;
 - b) Give the Auditor any information or an explanation requested by the Auditor of any matter in any way connected with the matters referred to in paragraphs 1.3 to 1.7; and
 - c) Otherwise assist the Auditor in conducting the review referred to above.
- 2.8 IMA will as soon as is practicable undertake the steps in paragraph 2.2 as they apply to any additional Protected Rating 1 Policyholders identified in the Compliance Report or in respect of any deficiency in the amount refunded to any Affected Policyholder identified in the Compliance Report.
- 2.9 RACV and NRMA Insurance will do all things necessary to ensure compliance by IMA with the obligations in paragraphs 2.6 to 2.8.
- 2.10 Not later than 28 days after the date of this enforceable undertaking, IMA will cause a review to be undertaken of the steps taken by IMA to comply with the obligations under paragraphs 2.1, 2.2 and 2.6 to 2.8 and a report to be prepared which must:
- a) be made by the Compliance Manager of IMA;

- b) be approved by the Managing Director of IMA;
- c) be addressed and sent to the Assistant Director Enforcement (Financial Services South/West) of ASIC;
- d) be copied to the Compliance Committees of each of IMA, RACV and NRMA Insurance;
- e) set out in detail the steps taken by IMA to comply with the obligations under paragraph 2.1, 2.2 and 2.6 to 2.8;
- f) set out in detail the steps taken by RACV to comply with the obligations under paragraph 2.5 and 2.9;
- g) set out in detail the steps taken by NRMA Insurance to comply with the obligations under paragraph 2.5 and 2.9;
- h) contain a schedule setting out, for each Affected Policyholder, their name, current address, telephone number, date of acceptance of the RACV Branded - IMA Policy, total paid in respect of the RACV Branded - IMA Policy, and the amount paid for rating protection; and
- i) confirm, in respect of each Affected Policyholder, the payment to them of a refund and the sending to them of the letter referred to in paragraph 2.2

3. Acknowledgments

3.1 IMA, RACV and NRMA Insurance acknowledge that ASIC:

- a) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution;
- b) may from time to time publicly refer to this undertaking; and
- c) will make this undertaking available for public inspection.

3.2 IMA RACV and NRMA Insurance acknowledge that this undertaking in no way derogates from the rights and remedies available to any person or entity, other than ASIC, arising from any conduct described in this undertaking.

3.3 ASIC acknowledges that nothing in this enforceable undertaking constitutes an admission by IMA, RACV or NRMA Insurance to ASIC or any other person.

3.4 IMA, RACV and NRMA Insurance acknowledge that ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or to pursue a criminal prosecution, or its power to lay charges or to seek a pecuniary civil order in relation to such conduct.

3.5 IMA, RACV and NRMA Insurance acknowledge that this undertaking has no operative force until accepted by ASIC.

The Common Seal of Insurance Manufacturers of Australia Pty Limited (ACN 004 208 084) was duly affixed to this undertaking on 1st December 2001 in the presence of and the sealing is attested by:



Handwritten signature of Ian F Brown.

Director **IAN F BROWN**

Handwritten signature of S. J. Gleaton.

Director/Secretary
S. J. GLEATON

The Common Seal of RACV Sales and Marketing Pty Ltd (ACN 005 258 702) was duly affixed to this undertaking on 21 December 2001 in the presence of and the sealing is attested by:



Handwritten signature of Maxwell Gordon Lam.

Director
MAXWELL GORDON LAM

Handwritten signature of Barry Nerlich.

Director/Secretary
BARRY NERLICH

The Common Seal of NRMA Insurance Limited (ACN 000 016 722) was duly affixed to this undertaking on 19th December 2001 in the presence of and the sealing is attested by:



Handwritten signature of Ian F Brown.


Director
IAN F BROWN

Handwritten signature of S. J. Gleaton.

Director/Secretary
S. J. GLEATON

Accepted by the Australian Securities and Investments Commission pursuant to section 93AA of the Australian Securities and Investments Commission Act by its duly authorised delegate.

Date this 8th day of January 2002


Allen Turton
Director Enforcement

