

**COMMERCE COMMISSION**

**IAG NEW ZEALAND LIMITED**

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**SETTLEMENT AGREEMENT**

**DATE 14 SEPTEMBER 2012**

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**AGREEMENT dated 14 September 2012**

## **PARTIES**

**Commerce Commission ("Commission")**

**IAG New Zealand Limited ("IAG")**

## **INTRODUCTION/BACKGROUND**

- A. In October 2011 IAG New Zealand Limited (advised the Commerce Commission that it had discovered an issue relating to the incorrect implementation of the automatic sum insured adjustment clauses under certain home and content policies. This had resulted in the sum insured under those policies being less than it would have been if the ASIA clauses had been properly implemented. At that time, IAG outlined their proposed approach to remediation.
- B. IAG subsequently became aware (and informed the Commission) that there are some customers whose current policies do not contain ASIA clauses but the sum insured under these policies was set by reference to the sum insured under Prior Affected Policies in circumstances where indexation of the sum insured under these policies had not been implemented by IAG in the manner required by the terms of those policies. (Terms used in this Agreement are defined in clause 29 below).
- C. IAG has kept the Commission informed on a regular basis and has had various discussions with the Commission regarding the process for, and progress of, remediation. IAG has provided the Commission with a comprehensive investigation summary for this matter detailing the investigations which IAG has undertaken and the remediation steps which IAG has been, and will be, taking.
- D. The Commission has investigated possible contraventions of the Fair Trading Act 1986 arising from the incorrect implementation of the ASIA Clauses under the Affected Policies ("the investigation").
- E. IAG has cooperated fully with the Commission at all times in relation to the investigation.
- F. This Agreement sets out the terms of the agreement reached between IAG and the Commission as to the basis on which the Commission's investigation will be resolved.

## **AGREEMENT**

### **Acknowledgement by IAG**

- 1. IAG acknowledges that some of its conduct in relation to the Affected Policies and Flow-on Policies may have contravened sections 9, 11 and 13 of the Act.

### Remedial Action

2. IAG has already corrected the indexation rates in those systems which provide for the indexation of sums insured. Those systems now correctly calculate the annual adjustment to the sum insured in the manner required by the applicable ASIA Clauses.
3. IAG has commenced remedial action in relation to:
  - (a) each of the Affected Policies;
  - (b) each of the Flow-on Policies; and
  - (c) all existing and previously settled claims under those policies.

IAG will undertake and complete the further remedial actions set out in clauses 4 to 10 below.

4. Where an Affected Policy or a Flow-on Policy is in force at the date of this Agreement, IAG will:
  - (a) shortly prior to the next renewal of that policy occurring after:
    - (i) 1 July 2012 in the case of an Affected Policy on IAG's Polisy system or ASB Connect system or a Flow-on Policy where the Prior Affected Policy was on IAG's Polisy system or ASB Connect system; or
    - (ii) 15 July 2012 in the case of an Affected Policy on IAG's Datarich system or a Flow-on Policy where the Prior Affected Policy was on IAG's Datarich system,

send, or use all reasonable efforts to cause to be sent, to either the Affected Policyholder or their broker a letter explaining:

- (iii) in the case:
  - (A) of an Affected Policy that there has been an incorrect application of indexation to their sum insured; or
  - (B) of a Flow-on Policy that there was an incorrect application of indexation to the sum insured under their Prior Affected Policy and that the sum insured under their Flow-on Policy was set by reference to the incorrectly adjusted sum insured under that Prior Affected Policy;
- (iv) that their sum insured will increase at the time of renewal to the Corrected Figure as at that date;
- (v) how they may select a different sum insured if the customer is unhappy with the increased figure;
- (vi) how to contact IAG to discuss the issue; and
- (b) unless the Affected Policyholder otherwise requests, with effect from the time of the next renewal of the policy after:

- (i) 1 July 2012 in the case of an Affected Policy on IAG's Polisy system or ASB Connect system or a Flow-on Policy where the Prior Affected Policy was on IAG's Polisy system or ASB Connect system; or
- (ii) 15 July 2012 in the case of an Affected Policy on IAG's Datarich system or a Flow-on Policy where the Prior Affected Policy was on IAG's Datarich system,

increase the sum insured under the policy to the Corrected Figure calculated as at that policy renewal date.

5. Where an Affected Policyholder either:

- (a) has made an existing Total Loss Claim under their Affected Policy or Flow-on Policy which has not been settled at the date of this Agreement; or
- (b) makes a Total Loss Claim under their Affected Policy or Flow-on Policy after the date of this Agreement in respect of a claim where the Claim Event Date is prior to the next renewal of the policy after:
  - (i) 1 July 2012 in the case of an Affected Policy on IAG's Polisy system or ASB Connect system or a Flow-on Policy where the Prior Affected Policy was on IAG's Polisy system or ASB Connect system; or
  - (ii) 15 July 2012 in the case of an Affected Policy on IAG's Datarich system or a Flow-on Policy where the Prior Affected Policy was on IAG's Datarich system,

IAG will deal with that claim:

- (c) as if the sum insured under the policy at the Claim Event Date was the Corrected Figure calculated as at that date;
- (d) but in all other respects in accordance with the usual IAG claims procedures.

6. Where, prior to the date of this Agreement, IAG has settled a Total Loss Claim under an Affected Policy or Flow-on Policy in circumstances where the sum insured under the policy at the Claim Event Date was less than the Corrected Figure calculated as at the date, IAG will notify the Affected Policyholder:

- (a) in the case of an Affected Policy that there was an incorrect application of indexation to their sum insured; or
- (b) in the case of a Flow-on Policy that there was an incorrect application of indexation to the sum insured under their Prior Affected Policy and that the sum insured under their Flow-on Policy was set by reference to the incorrectly adjusted sum under that Prior Affected Policy,

and pay to the Affected Policyholder the aggregate of:

- (c) the difference between:
  - (i) the sum insured under the policy as at the Claim Event Date; and

- (ii) the lesser of:
    - (A) the Corrected Figure calculated as at that date; and
    - (B) the amount of the loss suffered by the Affected Policyholder in respect of which they would have been entitled to be indemnified under the policy in respect of the relevant claim had the sum insured under the policy at the Claim Event Date been the Corrected Figure; and
  - (d) interest on the amount calculated under sub-clause (c) (on a non-compounding basis), at the rates applicable under the Judicature Act 1908 from time to time, for the period between the date on which the claim was previously settled and the date of payment to the Affected Policyholder of the additional amount under this clause 6.
7. IAG has used all reasonable endeavours to identify all Affected Policyholders entitled to an additional payment under clause 6 and to make payments to them of the sums to which they are entitled no later than 31 August 2012.
  8. Where IAG is unable to locate an Affected Policyholder who is entitled to an additional payment under clause 6, after first contacting any primary source contact, IAG will contract an authorised and licensed 'tracer' agent to try to locate the Affected Policyholder.
  9. Where, having taken the steps set out in clauses 7 and 8, IAG is unable to locate an Affected Policyholder, IAG will treat any payment due to that Affected Policyholder as if that payment was unclaimed money under the Unclaimed Money Act 1971.
  10. An allowance for GST will be included in all additional cash payments to Affected Policyholders. Interest payable by IAG under clause 6 will be calculated on the figure inclusive of the GST allowance.
  11. IAG will at its cost retain an independent accounting firm to provide the Commission with:
    - (a) An interim report by 31 October 2012 confirming progress of the Remediation Process as at 31 August 2012. This report must include the following details:
      - (i) The total value of all payments made to Affected Policyholders in accordance with clause 6.
      - (ii) The number of Affected Policyholders (if any) who have not received payment under clause 6, together with the identifying details of each such Affected Policyholder, the amount outstanding to each Affected Policyholder, the reasons for the failure to make the payment and the steps taken to attempt to pay them.
    - (b) A final report by 30 September 2013 confirming substantial completion of the

Remediation Process as at 31 July 2013. This report must include the following details:

- (i) The total value of all payments made to Affected Policyholders in accordance with clause 6.
- (ii) The number of Affected Policyholders (if any) who have not received payment under clause 6, together with the identifying details of each such Affected Policyholder, the amount outstanding to each Affected Policyholder, the reasons for the failure to make the payment and the steps taken to attempt to pay them.
- (iii) An opinion as to whether the Remediation Process, including the calculation of the amount paid to Affected Policyholders under clause 6, has been substantially completed in conformity with the terms of this Agreement.

12. The Commission acknowledges for the purposes of clause 11 that:

- (a) Total Loss Claims may continue to be made by Affected Policyholders after the date of this agreement where the Claim Event Date is prior to the next renewal of the policy after the applicable date specified in clause 5(b) and it is unlikely that all Total Loss Claims under Affected Policies and Flow-on Policies will be settled by 31 July 2013; and
- (b) in providing an opinion as to whether there has been substantial completion of the Remediation Process as at 31 July 2013 the independent accounting firm will be unable to verify that the Remediation Process has been completed in relation to each individual Affected Policy or Flow-on Policy and to each Total Loss Claim to which clause 5 applies but will form an opinion based upon a process of sampling selected Affected Policies, Flow-on Policies and Total Loss Claims as determined by it.

#### **Renewal Notices**

13. In the course of its investigations, IAG has become aware that, in relation to one category of home contents policies and one category of commercial policies, although the policies did not contain ASIA Clauses, the renewal notices sent to the relevant policyholders contained wording indicating that the policies would be subject to an ASIA adjustment.
14. IAG are currently investigating what, if any, indexation rates have been applied to these policies and whether remedial work is required for these policies. If remedial work is required for these policies, IAG will deal with them as if they were Affected Policies and, as expeditiously as reasonably practical, undertake the same remedial steps and reporting requirements in relation to them as IAG has agreed to take in relation to Affected Policies. All policies in respect of which IAG takes such remedial steps will be deemed to be Affected Policies for the purposes of this Agreement.

**Handling of Inquiries**

15. IAG will, until the completion of the Remediation Process:
- (a) provide easily accessible points of contact (including an 0800 number which will be displayed prominently on IAG's website) for those Affected Policyholders with questions about the Remediation Process; and
  - (b) ensure that those points of contact are:
    - (i) clearly communicated to the Affected Policyholders on its website and in all written communications with Affected Policyholders;
    - (ii) staffed during normal business hours by capable staff who have been given appropriate instructions with respect to the handling of inquiries by Affected Policyholders regarding the incorrect application of the indexation process to their Affected Policies and the Remediation Process.

**Payment of Costs**

16. IAG will, within 20 days of the date of this Agreement, pay the Commission's actual and estimated further costs in relation to the investigation (including completion of this agreement) in the amount of \$10,406.

**No Further Action by Commission**

17. The Commission will close the investigation once the parties have signed this agreement and IAG has paid the Commission's costs as provided for in clause 16.
18. The Commission will not issue or encourage any civil or criminal legal proceedings against IAG or any of its Related Parties in relation to:
- (a) any representation made by or on behalf of IAG concerning inflation adjustments of the sum insured under any Affected Policy;
  - (b) the manner of implementation by IAG of an ASIA Clause under any Affected Policy; or
  - (c) the manner in which the sum insured under any Affected Policy or Flow-on Policy was set by IAG.

**Unaffected Rights**

19. Nothing in this Agreement:
- (a) constitutes an admission of legal liability by IAG or any of its Related Parties;
  - (b) shall limit or affect the ability of any person who has not consented to be bound by the terms of this Agreement from pursuing any rights available to him, her, or it under the Act or under any other law;
  - (c) shall limit or affect the ability of the Commission to investigate and/or issue proceedings against IAG or any of its Related Parties in respect of:

- (i) matters other than the conduct referred to in clause 18 of this agreement;
  - (ii) any conduct engaged in by any of them in connection with the Affected Policies or Flow-on Policies after the completion of the Remediation Process; or
  - (iii) any failure by IAG to comply with this Agreement.
20. If there is any material breach by IAG in fulfilling its obligations under this Agreement, the Commission may, in its complete discretion, recommence the investigation and take any action it deems appropriate including issuing civil proceedings or prosecution under the Act or civil proceedings for breach of this agreement.
21. If the Commission commences any proceedings pursuant to clause 20 above, IAG waives any limitation defence that arises solely because of the time that elapsed between the date of this Agreement and the alleged material breach.

### **Miscellaneous**

22. IAG and the Commission will each take such steps as are necessary or desirable to give full effect to the terms of this Agreement.
23. Either IAG or the Commission may release or publish this Agreement, including to the public at large, after it has been signed.
24. The Commission acknowledges that some of the information provided by IAG to the Commission may be confidential and/or commercially sensitive. If the Commission receives a request pursuant to the OIA which covers or might cover and/or record or reveal all or some of the IAG Information (an "Information Request"), it will promptly consult with IAG as to whether there are grounds for the requested material to be withheld under Part 1 of the OIA. The Commission will also take full and proper account of the confidential and/or commercially sensitive nature of the IAG Information and of any views expressed by IAG, in accordance with the provisions of the OIA, when considering any Information Request;
25. For the purposes of the Contracts (Privity) Act 1982, this Agreement is intended to confer a benefit on, and is enforceable by, the Related Parties of IAG.
26. IAG will:
- (a) provide the Commission with a copy of any proposed separate media release or other formal statement that it proposes to issue in connection with this settlement not less than one working day in advance of publication;
  - (b) provide the Commission with an opportunity to comment on the proposed media release or public statement; and
  - (c) will consider in good faith any matters raised by the Commission in its comments.

This requirement applies only to the initial announcement of this settlement in the period immediately following the signing of this agreement. It does not apply to any



subsequent media releases or public statements concerning the investigation or settlement, or to responses to questions from media, investors or analysts.

27. The Commission will:

- (a) provide IAG with a copy of any proposed separate media release or other formal statement that it proposes to issue in connection with this settlement not less than one working day in advance of publication;
- (b) in preparing its separate media release or other formal statement, take account of the content of any proposed separate media release or other formal statement prepared by IAG and previously provided to the Commission under clause 26;
- (c) provide IAG with an opportunity to comment on the Commission's proposed media release or public statement; and
- (d) will consider in good faith any matters raised by IAG in its comments.

This requirement applies only to the initial announcement of this settlement in the period immediately following the signing of this agreement by both parties. It does not apply to any subsequent media releases or public statements concerning the investigation or settlement, or to responses to questions from media, Government officials or members of Parliament.

28. Any notice or communication that is given or served under or in connection with this Agreement must be given in writing in the following manner:

- (a) if addressed to the Commission, by hand delivery or email to the following address:

Commerce Commission  
Level 19, ASB Building  
135 Albert Street  
Auckland 1143

Attention: James McIvor  
Competition Branch, Commerce Commission

Email: [james.mcivor@comcom.govt.nz](mailto:james.mcivor@comcom.govt.nz)

- (b) if addressed to IAG, by hand delivery or email to the following address:

General Counsel  
IAG New Zealand Limited  
1 Fanshawe Street – Level 4  
Auckland

Attention: Martin Hunter

Email: [martin.hunter@iag.co.nz](mailto:martin.hunter@iag.co.nz)

29. In this Agreement, unless the context otherwise requires, the following terms shall bear the following meanings:

- (a) "Act" means the Fair Trading Act 1986;
- (b) "Affected Policy" means any policy (whether or not still in force) issued by IAG (or any of its predecessors in business) where the ASIA Clause in the policy has, at any time after 3 May 1998, not been implemented by IAG in accordance with its terms.
- (c) "Affected Policyholder" means the holder or former holder of an Affected Policy or a Flow-on Policy;
- (d) "ASIA Clause" means a clause providing for an automatic sum insured adjustment and includes a clause where the sum insured may be adjusted at IAG's discretion to reflect the costs of inflation;
- (e) "Claim Event Date" means the date of the occurrence giving rise to the relevant claim under an Affected Policy;
- (f) "Corrected Figure" means:
  - (i) in relation to an Affected Policy on a particular date, the amount which the sum insured under the Affected Policy would have been or would be at that date if the ASIA Clause under the Affected Policy had been, and continued to be, implemented correctly on each renewal of the policy since the latest of:
    - (A) the commencement of the Affected Policy; or
    - (B) in the case of:
      - (aa) an Affected Policy on IAG's Polisy system, the commencement of the renewal year of that policy in 1980;
      - (bb) an Affected Policy on IAG's Policy Plus system, the commencement of the renewal year of that policy in 1998; and
      - (cc) an Affected Policy on IAG's Datarich or ASB Connect systems, the commencement of the renewal year of that policy in 1990; or
    - (C) the last occasion on which the sum insured was reset at the initiation of the Affected Policyholder or its broker; and
  - (ii) in relation to a Flow-on Policy on a particular date, the amount which the sum insured under the Flow-on Policy would have been or would be at that date if:
    - (A) the ASIA Clause under the Prior Affected Policy had, until its expiry or cancellation, been implemented correctly on each renewal of the policy

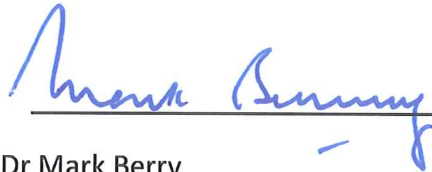
since the latest of:

- (aa) the commencement of that Prior Affected Policy; or
  - (bb) in the case of:
    - (AA) a Prior Affected Policy on IAG's Polisy system, the commencement of the renewal year of that policy in 1980;
    - (BB) a Prior Affected Policy on IAG's Policy Plus system, the commencement of the renewal year of that policy in 1998;
    - (CC) an Affected Policy on IAG's Datarich or ASB Connect systems, the commencement of the renewal year of that policy in 1990; or
  - (cc) the last occasion on which the sum insured under the Prior Affected Policy was reset at the initiation of the Affected Policyholder or its broker;
- (B) the sum insured under the Flow-on Policy at its inception was properly set by reference to the amount which would have been the sum insured under the Prior Affected Policy at the date of its expiry or cancellation if the ASIA Clause under that Prior Affected Policy had been properly implemented from the applicable date specified in sub-clause (A); and
- (C) the Flow-on Policy contained an ASIA Clause in identical terms to that contained in the Prior Affected Policy and that ASIA clause had been properly implemented from the inception of the Flow-on Policy;
- (g) "Flow-on Policy" means a policy (whether or not still in force):
- (i) which is not or was not an Affected Policy; and
  - (ii) the sum insured under which was initially set by reference to a Prior Affected Policy and has not subsequently been reset at the initiation of the Affected Policyholder or its broker.
- (h) "IAG Information" includes any information, data or document (whether in hardcopy, electronic or oral form) and any written record of any information or discussion relating to IAG or its business;
- (i) "OIA" means the Official Information Act 1982;
- (j) "Prior Affected Policy" means, in relation to a Flow-on Policy, the Affected Policy previously held by the Affected Policyholder where the sum insured under the Flow-on Policy was set by reference to the sum insured under that Affected Policy;

- (k) "Related Parties" of IAG includes:
  - (i) its past and present directors, officers, employees, agents advisors and contractors;
  - (ii) any of IAG's related companies (including any company or body corporate which would be a related company if incorporated in New Zealand) or any of their past and present directors, officers, employees, agents advisors and contractors;
- (l) "Remediation Process" means the process to be undertaken by IAG in accordance with clauses 4 to 10 and 14 to redress the incorrect implementation of the ASIA Clauses in the Affected Policies and Prior Affected Policies;
- (m) "Total Loss Claim" means a claim under an Affected Policy or Flow-on Policy in respect of which the Affected Policyholder is, or has been, entitled to receive the full sum insured under the policy.

**EXECUTION**

SIGNED for and on behalf of )  
THE COMMERCE COMMISSION )



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Dr Mark Berry  
Chair

SIGNED for and on behalf of )  
IAG NEW ZEALAND LIMITED )

 ALLAN DORNAN

Authorised Representative



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Authorised Representative