

**TRADE PRACTICES ACT 1974**

**AND**

**COMPETITION AND CONSUMER ACT 2010**

Undertaking to the Australian Competition and Consumer Commission given for  
the purposes of section 87B

by

G & R Wills Holdings Pty Ltd

ACN 097 284 083

**Person giving this undertaking**

- (1) This undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by G & R Wills Holdings Pty Ltd (ACN 097 284 083) (**G & R Wills**) of 7 Pruen Road, Berrimah, NT 0820, for the purposes of:
  - (i) section 87B of the *Trade Practices Act 1974* (**the TPA**), as applied by Item 6 of Schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010*, for conduct engaged in prior to 1 January 2011; and
  - (ii) section 87B of the *Competition and Consumer Act 2010* (**the CCA**) for conduct engaged in from 1 January 2011.

**Background**

- (2) G & R Wills is a wholesaler and supplies retail stores in remote Indigenous communities in the Northern Territory with a wide range of consumer products.
- (3) In the period from 1 January 2009 to 3 February 2012 G & R Wills supplied the
  - (a) HAB-0017 Baby Walkerand on at least 5 April 2012 G & R Wills offered to supply
  - (b) the Cellular Baby Stroller; and
  - (c) the Fashion Children's Trolley Stroller (LC801) .(collectively, the products).
- (4) On 3 February 2012 ACCC staff conducted a routine product safety survey of the G & R Wills premises and ascertained that the products were non-compliant with the applicable product safety standards, and therefore breached section 65C(1)(a) of the TPA and section 106 of the Australian Consumer Law (**the ACL**) contained in Schedule 2 to the CCA. Further details are set out below.

- (5) ACCC staff informed G & R Wills on 3 February 2012 that the HAB-0017 Baby Walker was unlikely to meet the Baby Walker Safety Standard and should not be further supplied.
- (6) Between 3 February 2012 and 23 March 2012 G & R Wills supplied a further 52 non-compliant HAB-0017 Baby Walkers for sale in remote indigenous communities.
- (7) On 23 March 2012 G & R Wills conducted a voluntary recall of the HAB-0017 Baby Walker.

The HAB-0017 Baby Walker

- (8) During the period from 1 January 2009 to 26 March 2012, G & R Wills, in connection with the wholesale of consumer products, supplied 1,307 model HAB-0017 Baby Walkers to 93 remote communities.
- (9) Baby walkers must meet the safety standard contained in Regulation 4 of the Trade Practices (Consumer Product Safety Standard) (Baby Walkers) Regulations 2002 (**the Baby Walker Safety Standard**).
- (10) The Baby Walker Safety Standard requires compliance with a number of sections of the American Society for Testing and Materials Consumer Safety Specifications for Infant Walkers F977-00 (**F977-00**). Specifically:

- (i) F977-00 section 6.4 (*Prevention of Falls Down Step(s)*) requires the walker to maintain contact with and be supported only by the test platform at the conclusion of the tests contained in F977-00 section 7.6; and
- (ii) F977-00 section 9.3 requires the walker to be labelled with the following exact safety warnings:

**WARNING**

Never leave child unattended. Always keep child in view while in walker.

**WARNING – STAIR HAZARD**

Avoid serious injury or death

Block stairs/steps securely before using walker

- (iii) F977-00 section 9.3 also requires the walker to be labelled with the following additional safety warnings, or with words to the following effect:

Use only on flat surfaces free of objects that could cause the walker to tip over.

To avoid burns, keep the child away from hot liquids, ranges, radiators, space heaters, fireplaces etc.

- (11) The model HAB-0017 Baby Walker is non-compliant with the Baby Walker Safety Standard. Specifically:

- (i) the HAB-0017 Baby Walker did not have a braking mechanism to prevent it from moving if one or more of the wheels came off a horizontal plane, thus not meeting the requirement in section 6.4 of F977-00 for a mechanism to prevent the walker falling down steps; and
- (ii) the HAB-0017 Baby Walker did not have the required warning labels, in contravention of F977-00 section 9.3.

#### The strollers

- (12) On or about 5 April 2012, G & R Wills, in connection with the wholesale of consumer products, supplied or offered to supply the Cellular Baby Stroller and the Fashion Children's Trolley Stroller (LC801) (**the Strollers**) to remote communities.
- (13) Strollers are required to meet the safety standard contained in Consumer Protection Notice 8 of 2007 – Consumer Product Safety Standard for Prams and Strollers, which references with some variations, AS/NZS 2088:2000, Prams and Strollers – Safety Requirements (**the Stroller Safety Standard**).
- (14) As at 5 April 2012, the Strollers were non-compliant with the Stroller Safety Standard as they did not have the correct warning labels. Specifically:
  - (i) the Strollers did not display the following mandatory warning, as required by clause 11.1(c) of AS/NZS 2088:2000, Prams and Strollers – Safety Requirements, as incorporated into the Stroller Safety Standard:
 

WARNING:  
 -FOLLOW THE MANUFACTURER'S INSTRUCTIONS.  
 -PUT ON ALL THE BRAKES WHENEVER YOU PARK THE STROLLER.  
 -DO NOT LEAVE CHILDREN UNATTENDED.  
 -DO NOT CARRY EXTRA CHILDREN OR BAGS ON THIS STROLLER.  
 -MAKE SURE CHILDREN ARE CLEAR OF ANY MOVING PARTS IF YOU ADJUST THE STROLLER, OTHERWISE THEY MAY BE INJURED; and
  - (ii) the Strollers' harnesses displayed a warning label which said 'WARNING! For your baby's safe, please fasten seatbelt', whereas pursuant to clause 11.1(e) of AS/NZS 2088:2000, Prams and Strollers – Safety Requirements, as incorporated into the Stroller Safety Standard, the label was required to say 'WARNING: USE THIS HARNESS AT ALL TIMES'.
- (15) The ACCC considers that by engaging in the conduct set out at paragraphs (8) to (14) above, G & R Wills, in trade or commerce, supplied consumer goods in respect of which a safety standard for such consumer goods was in force, in circumstances where the consumer goods did not comply with that safety standard, in contravention of:

- (i) section 65(c)(1)(a) of the TPA, to the extent that the conduct occurred prior to 1 January 2011; and
  - (ii) section 106(1) of the Australian Consumer Law (Schedule 2 to the CCA) (**the ACL**), to the extent that the conduct occurred on or after 1 January 2011.
- (16) The ACCC considers that by engaging in the conduct set out at paragraphs (8) to (14) above, G & R Wills, in trade or commerce, offered to supply each of the products, being consumer goods in respect of which a safety standard for such consumer goods was in force, in circumstances where the consumer goods did not comply with that safety standard, in contravention of section 106(2) of the ACL, to the extent that the conduct occurred on or after 1 January 2011.
- (17) G & R Wills admits that the conduct described at paragraphs (8) to (14) above contravened section 65C(1)(a) of the TPA and section 106(1) of the ACL.
- (18) G & R Wills admits that the conduct described at paragraphs (8) to (14) above contravened section 106(2) of the ACL.
- (19) G & R Wills is willing to resolve this matter by the provision of an undertaking pursuant to section 87B of the TPA/CCA and by the payment of three infringement notices totalling \$19, 800 issued by the ACCC under section 134A of the CCA for the contraventions relating to the HAB-0017 Baby Walker referred to in paragraph (11) and relating to the Strollers referred to in paragraph (14).

#### **Commencement of undertaking**

- (20) This undertaking comes into effect when:
- (i) the undertaking is executed by G & R Wills; and
  - (ii) the ACCC accepts the undertaking so executed.
- (21) Upon the commencement of this undertaking, G & R Wills undertakes to assume the obligations set out in paragraphs (22) to (24) below.

#### **Undertakings**

- (22) G & R Wills undertakes for the purposes of section 87B of the CCA, that for a period of 5 years from the date of this Undertaking, it will not, and will ensure that its subsidiaries will not, in trade or commerce:
- (i) supply consumer goods in respect of which there is a safety standard in circumstances where those goods do not comply with the safety standard; and
  - (ii) offer to supply consumer goods in respect of which there is a safety standard in circumstances where those goods do not comply with the safety standard.

### **Trade Practices Compliance Program**

(23) G & R Wills undertakes that it will, at its own expense:

- (i) establish and implement a Trade Practices Compliance Program, within 3 months of the commencement of this Undertaking, in accordance with the requirements set out in **Annexure A** to this Undertaking, being a program designed to minimise G & R Wills' risk of future breaches of the ACL, and to ensure its awareness of the responsibilities and obligations in relation to the requirements of section 106(1) and (2) of the ACL;
- (ii) maintain and continue to implement the said program for a period of 5 years from the commencement of this Undertaking; and
- (iii) provide, at its own expense, a copy of any documents required by the ACCC in accordance with **Annexure A**.

### **Product Safety – Public Education Program**

(24) G & R Wills undertakes that, within 1 month of the commencement of this Undertaking, it will offer to enter into, and on the offer being accepted, enter into a contract, with Aboriginal Resource and Development Services Inc. (**ARDS**) or another provider approved by the ACCC, which provides that:

- in consideration of the payment of \$25,000 by G & R Wills to ARDS or the ACCC-approved provider;
- ARDS or the ACCC-approved provider will design and implement a Product Safety – Public Education Program in accordance with the terms set out in **Annexure B** to this Undertaking.

### **Acknowledgments**

(25) G & R Wills acknowledge that:

- (i) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of s. 87B Undertakings on its website;
- (ii) the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications;
- (iii) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
- (iv) a summary of the ACCC Compliance Program Review reports referred to in Annexure A of the Undertaking may be held with this Undertaking in the public register.

**Executed by**

G & R Wills Holdings Pty Ltd (ACN 097 284 083) and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.

.....  
Secretary/Director



.....  
Director

This 25 day of July 2012

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION PURSUANT TO SECTION 87B OF THE *TRADE PRACTICES  
ACT 1974* AND SECTION 87B OF THE *COMPETITION AND CONSUMER ACT  
2010*.**



.....  
Rodney Graham Sims  
Chairman

This 20<sup>th</sup> day of August 2012

## **Annexure A**

### **TRADE PRACTICES COMPLIANCE PROGRAM**

#### **LEVEL 2**

G & R Wills will establish a Trade Practices Compliance Program (**Compliance Program**) that complies with each of the following requirements:

#### **1. Appointments**

- 1.1. Within one month of the date of the Undertaking coming into effect G & R Wills will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the Compliance Program (**the Compliance Officer**).

#### **2. Compliance Officer Training**

- 2.1. G & R Wills will ensure that, within 3 months of the Undertaking coming into effect, the Compliance Officer attends practical training focusing on the ACL.
- 2.2. G & R Wills shall ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law;
- 2.3. G & R Wills, within 14 days of completion of training, will provide the ACCC with a written statement from the compliance professional or legal practitioner who conducts the training, confirming the completion of the training conducted in accordance with 2.1 and 2.2 above.

#### **3. Staff Training**

- 3.1. G & R Wills will cause all employees of G & R Wills whose duties could result in them being concerned with conduct that may contravene the ACL to receive regular (at least once a year) practical training administered by the Compliance Officer (once trained) or a qualified compliance professional or legal practitioner with expertise in trade practices law, that focuses on the ACL.

#### **4. Complaints handling – G & R Wills will:**

- 4.1. develop procedures for recording, storing and responding to trade practice complaints within 3 months of the Undertaking coming into effect; and
- 4.2. provide the ACCC with an outline of the complaint handling system within 3 months of the Undertaking coming into effect.

5. **Product Safety** –G & R Wills will:

- 5.1. maintain up-to-date copies, at its business premises, of all prescribed consumer product safety standards and prescribed consumer information standards that relate to products G & R Wills supplies;
  - 5.2. ensure that the products supplied that are subject to a prescribed safety and/or information standard under the CCA, comply with the relevant standard; and
  - 5.3. design, implement and maintain recall procedures that enable products supplied by G & R Wills that do not comply with prescribed safety and/or information standards under the CCA to be efficiently and effectively withdrawn from the market and returned to G & R Wills.
6. G & R Wills will ensure that the Compliance Officer reports to their director(s) or governing body every 3 months on the continuing effectiveness of the Compliance Program.
7. **Review** – G & R Wills shall, at its own expense, cause an annual review of the Compliance Program elements (**the Review**) to be carried out in accordance with each of the following requirements:

7.1. **Scope of the Review** – G & R Wills shall ensure that the Review is broad and rigorous enough to:

- 7.1.1. provide G & R Wills and the ACCC with a supportable verification that G & R Wills has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of G & R Wills;
- 7.1.2. provide the Review Report and opinions detailed at point 8 below; and
- 7.1.3. provide G&R Wills and the ACCC with a supportable verification that G&R Wills has in place a product safety compliance program that complies with the requirements of the Undertaking and is suitable for the size and structure of G&R Wills.

7.2. **Independence of Reviewer** – G & R Wills shall ensure that the Review is carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:

- 7.2.1. did not design or implement the Compliance Program;
- 7.2.2. is not a present or past staff member or director of G & R Wills;
- 7.2.3. has not acted and does not act for G & R Wills in any trade practices related matters;



- 7.2.4. has not and does not act for or consult to G & R Wills or provide other services on trade practices related matters other than Compliance Program reviewing; and
- 7.2.5. has no significant shareholding or other interests in G & R Wills.
- 7.3. **Evidence** - G & R Wills shall use its best endeavors to ensure that the Review is able to be conducted on the basis that the Reviewer has access to all relevant sources of information in G & R Wills' possession or control, including without limitation:
  - 7.3.1. enquiries of any employees, representatives, agents and stakeholders of G & R Wills;
  - 7.3.2. documents created by G & R Wills' consultants, legal practitioners and accountants for use in G & R Wills' Compliance Program;
  - 7.3.3. all documents required to assess G & R Wills' compliance with the relevant product safety/information standards under the CCA.
- 7.4. G & R Wills shall ensure that the first Review is completed within one year and one month of this Undertaking coming into effect and that each subsequent Review is completed within one year thereafter

## **8. Reporting**

- 8.1. G & R Wills shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in a Compliance Program Review Report, which will provide particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:
  - 8.1.1. details of the evidence gathered and examined during the Review;
  - 8.1.2. the name and relevant experience of the person appointed as G & R Wills' Compliance Officer;
  - 8.1.3. the Reviewer's opinion on whether G & R Wills has in place effective staff training, complaints handling programs that comply with the requirements of the Undertaking; and
  - 8.1.4. actions recommended by the Reviewer to ensure the continuing effectiveness of G & R Wills' Compliance Program.
- 8.2. G & R Wills shall ensure that each Compliance Program Review Report is completed and provided to G & R Wills within one month of completion of the Review.
- 8.3. G & R Wills will cause the Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.

- 8.4. G & R Wills shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC that are reasonably necessary to ensure that G & R Wills maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.
9. If requested by the ACCC, G & R Wills shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
10. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, G & R Wills shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting Compliance Program Review Report to be provided to the ACCC.

## **Annexure B**

### **PRODUCT SAFETY - PUBLIC EDUCATION PROGRAM**

The Program will consist of the development and broadcast of 5 product safety public education radio programs (the campaign), containing the following components:

1. The broadcasts will be in both plain English and Yolnu Matha (or other language approved by the ACCC) and will be designed to be understood by mothers of young children living in remote NT Indigenous communities;
2. The broadcasts will explain the essential messages contained in pages 34, 35, and 72 – 75 of the ACCC's *Keeping Baby Safe* publication along with any other material in that publication that might be appropriate in order to provide necessary context and background;
3. The information will be transmitted to all locations on the ARDS (or other provider as approved by the ACCC) network and broadcast at times when it is likely to be heard by large numbers of mothers of young children;
4. The first broadcast will occur within 3 months of the date of this Undertaking and the remainder of the campaign will be broadcast within 3 months from the date on which the first broadcast occurred;
5. The terms of the campaign, including the content of the broadcasts, are to be approved by the ACCC before the first broadcast; and
6. The campaign will be made available to the ACCC for inclusion on its website(s) and the ARDS is subsequently able to re-use the broadcasts as it sees fit.

#### **Contact details for ARDS are:**

374 Stuart Highway  
Winnellie NT 0821

Phone: 08 8984 4174  
Fax: 08 8984 4192

Website: [www.ards.com.au](http://www.ards.com.au)