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Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602



DIBBS ABBOTT STILLMAN | LAWYERS

Attention: Ursula Everett

Dear Ms Everett

**Notification N92538 Lodged by ResMed Asia Pacific Limited**

**Our Ref: N92538**

**Your Ref: SRS:MJS:3285420**

We refer to the further information requested by Ms Everett in her telephone conversation with this firm's Michael Sutton on 18 July 2006.

#### **Question 1**

The ACCC requested further information as to how the Accreditation Criteria currently works. It wanted to know whether these provisions were effectively already in place prior to the date of the notification and, if not, what the differences are between the old and the new Accreditation Criteria and whether it would have any impact on current selling partners.

The proposed changes to the Accreditation Criteria have been driven by the aim of maximising patient welfare. Previously there was a requirement for Accredited Partners to only focus on sales to end users. ResMed wishes to now highlight, reinforce and formalise the need for physical contact (i.e. appropriate service support) between the patient and Accredited Partner in the course of making a sale.

Previously, Accredited Partners were to maintain one fitting room, but there was no actual restriction on remote sales. For example, offers of sale via the Internet merely had to be accompanied by a list of locations that provided pre or after sales service. This has allowed the occurrence of the problems outlined in part 2 of the Public Benefit section of the supporting letter to the Notification. It is ResMed's understanding that all of its current accredited partners have physical premises (or utilise a mobile service whereby the Accredited Partner travels to the patient's home) in order to provide service in support of their sales activities.

Whilst Accredited Partners will still be permitted to advertise via the Internet, ResMed estimates that the restriction on remote sales will impact on approximately 7 of the 230 current Accredited Partners. These particular Accredited Partners are amongst the top 20% of ResMed's customers which predominantly sell directly from their physical premises. As a result, ResMed does not anticipate that the proposed changes to the Accreditation Criteria will have a material detrimental impact on any of its current Accredited Partners.

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In a market where competitor products are freely available, ResMed believes that the subject criteria will have a public benefit which will outweigh the limited constraint experienced by a few Accredited Partners.

## Question 2

The ACCC noted that remote sales will only be permitted in extenuating circumstances e.g. sales to customers in rural areas. The ACCC requested further information as to how these sorts of patients will obtain the necessary advice as regards the correct fitting and use of the products.

Typically, the approved remote sale will be to an Accredited Partner's existing patient. The patient will be purchasing accessories, a replacement mask or replacement flow generator. The order for accessories will be checked for compatibility with the patient's current CPAP Products. The mask will be checked for consistency and compatibility with the patient's existing mask and flow generator combination, whilst the flow generator will be confirmed as being appropriate for the patient's medical condition and set so that its permitted operating parameters (including pressure) are consistent with the patient's prescription. All these functions can be performed by the Accredited Partner where it holds a record of the patient's existing CPAP products together with their prescription information. The Accredited Partner would also provide the patient with telephone support.

ResMed would allow an Accredited Partner to conduct a remote sale to an existing patient where the sale can be performed in a manner that facilitates successful patient treatment and the maintenance of the relationship between the patient and the Accredited Partner. It is RedMed's position, however, that the sale of CPAP Products to a first-time patient should always be conducted on the premises of an Accredited Partner, or by the Accredited Partner attending at the patient's home. We are instructed that it is not uncommon for Accredited Partners to visit patients in remote areas for this purpose. ResMed does not presently foresee a situation in which it would permit a remote sale to a new patient.

We hope this letter covers all of the additional information sought by the ACCC. In the event that you have any further questions, please do not hesitate to contact me. In the event that I am unavailable, please direct your query to Michael Sutton whose direct telephone number is 02 8233 9587.

Yours sincerely

**Dibbs Abbott Stillman**

Scott Sloan  
Partner

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