

## **COMPETITION AND CONSUMER ACT 2010**

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

by

Tiny Tots Images Photography Pty Ltd

ACN 144 076 031

and

Jennifer Waters

### **Persons giving this undertaking**

1. This undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by Tiny Tots Images Photography Pty Ltd, ACN 144 076 031 (**Tiny Tots**) of 594 Portrush Road Glen Osmond South Australia 5064 and Ms Jennifer Waters of 48 Raymonds Road, Marble Hill, South Australia, Director of Tiny Tots, for the purposes of section 87B of the Competition and Consumer Act 2010 (**the Act**).

### **Background**

1. In early 2013 the ACCC received a complaint from an Indigenous consumer via a Legal Aid organisation regarding the conduct of Tiny Tots' door to door sales practices, and commenced an investigation.
2. Tiny Tots is incorporated in South Australia and provides photographic services to consumers who live in regional, rural and remote townships and communities across Australia. Jennifer Waters is the sole director of Tiny Tots.
3. Photographic services provided by Tiny Tots include individual and family portraits, framed and canvas printed photographs and framed photograph collections (**photographic services**). The photographic services are outlined on the Tiny Tots website at [www.tinytotsimagesphotography.com.au](http://www.tinytotsimagesphotography.com.au). Since early 2011 these services have been predominantly provided to consumers via 'pop up shops' at various locations including local Shire offices, recreation halls, RSL clubs and general stores, being locations other than the Tiny Tots usual place of business.
4. The Australian Consumer Law (**ACL**) is contained in Schedule Two of the Act and contains provisions relating to unsolicited consumer agreements, commonly called door to door sales.

### **Conduct of Concern**

5. Since at least January 2011 Tiny Tots has entered into approximately 1,400 unsolicited consumer agreements for photographic services with customers across Australia.
6. The ACCC is concerned that on each occasion that Tiny Tots entered into an unsolicited consumer agreement for photographic services in the period January 2011 until 9 August 2013 it contravened sections 29(1)(m), 76(a) and 79(b) of the ACL in that each agreement:

- i. failed to provide a notice on the front page that conspicuously and prominently informed the consumer of his or her rights to terminate the agreement, including ways in which the agreement could be terminated or “cooled off”;
  - ii. was not accompanied by a notice that could be used by the consumer to terminate the agreement;
  - iii. failed to conspicuously and prominently include certain required information including the Tiny Tots ACN/ABN, business address, email address and fax number; and
7. In addition to the matters referred to in paragraph 6 of this Undertaking, the agreement documents contained a misrepresentation about the consumers termination or cooling off rights for the period 1 January 2011 until December 2012 . Thereafter a similar misrepresentation was contained in a letter accompanying the agreement documents.
8. The ACCC was particularly concerned about the potential harm these practices can cause to remote Indigenous communities given the often limited opportunity for consumer to choose an alternative provider and the challenges facing Indigenous consumers in seeking a refund from businesses who are not located in their local area.
9. Ms Waters was knowingly concerned in the conduct described at paragraphs 5 and 6 in that she drafted or caused to be drafted the unsolicited consumer agreements.
10. Since becoming aware of the ACCC’s concerns Tiny Tots and Ms Waters have:
  - i. admitted the unsolicited selling agreements used by Tiny Tots on the instructions of Ms Waters contravened the unsolicited selling provisions of the ACL;
  - ii. amended the unsolicited consumer agreements used by Tiny Tots so as to comply with the requirements of the ACL; and
  - iii. offered to resolve the matter by the provision of this undertaking in accordance with section 87B of the Act.

### **Commencement of Undertaking**

11. This Undertaking comes into effect when:
  - i. the Undertaking is executed by Tiny Tots and Ms Waters; and
  - ii. the ACCC accepts the Undertaking so executed.
12. Upon the commencement of this Undertaking, Tiny Tots and Ms Waters (in her capacity as director of Tiny Tots) undertake to assume the obligations set out in paragraphs 14 to 17 below.
13. Upon the commencement of this Undertaking Ms Waters undertakes to assume the obligation set out in paragraph 18 below.

### **Undertakings**

14. Tiny Tots undertakes to ensure that the documents it uses when entering into unsolicited consumer agreements comply with the requirements of the ACL, and further undertakes to have its agreement documents reviewed annually, for a period of three years, by a suitably qualified trade practices professional.

### **Compliance Program**

15. Tiny Tots undertakes for the purposes of section 87B of the Act that it will:
- i. within three months of the date of this Undertaking coming into effect, establish and implement a Trade Practices Compliance Program (**Compliance Program**) in accordance with the requirements set out in **Annexure A**, being a program designed to minimise Tiny Tots' risk of future breaches of the ACL and to ensure its awareness of the responsibilities and obligations in relation to the requirements of sections 29(1)(m), 76(a) and 79(b) and to ensure its Directors and staff are aware of cross cultural issues when providing services to Indigenous consumers;
  - ii. maintain and continue to implement the Compliance Program for a period of three years from the date of this Undertaking coming into effect; and
  - iii. provide, at its own expense, a copy of any documents required by the ACCC in accordance with **Annexure A**.

### **Customer Letter**

16. Tiny Tots undertakes for the purpose of section 87B of the Act that it will, at its own expense, within 30 days of the date of this undertaking coming into effect, send or cause to be sent, a letter, in the form at **Annexure B**, to all of its customers who have entered into agreements for the supply of photographic services from January 2011 to 9 August 2013 and who provided a residential address in those Indigenous Communities as listed in **Annexure C** and who, to the date of this Undertaking coming into effect, have made a payment or payments towards, but have not yet received the photographs the subject of the agreement.

### **Refunds**

17. Tiny Tots undertakes for the purposes of section 87B of the Act, that for any customers who respond to a refund letter as set out in paragraph 16 of this Undertaking and seek a refund it will refund to that consumer all amounts paid by the customer (**the refunds**) by way of direct credit or cheque within six (6) weeks of receipt of the request for refund (**the Due Date**).
18. In the event that Tiny Tots fails to comply with the obligation to pay the Refunds as set out in paragraph 17 above, Jennifer Waters acknowledge that she will be liable to pay the refunds, or any unpaid portion of the Refunds to the customer within three weeks of the Due Date.


### **Acknowledgments**

19. Tiny Tots and Jennifer Waters 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 may, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications;

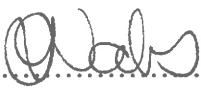
- iii. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
- iv. a summary of the ACCC Compliance Program review reports referred to in Annexure A of the Undertaking may be held with this Undertaking in the public register.

**Executed by**

Tiny Tots Images Photography Pty Ltd ACN 144 076 031 and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.

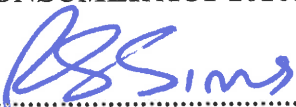
..........  
Secretary/Director

This.....<sup>5<sup>th</sup></sup>.....day of.....<sup>Feb</sup>.....2014  
AND

..........  
Jennifer Waters

This.....<sup>5<sup>th</sup></sup>.....day of.....<sup>Feb</sup>.....2014

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

..........  
Rodney Graham Sims  
Chairman

This.....<sup>15<sup>th</sup></sup>.....day of.....<sup>April</sup>.....2014

## **Annexure A**

### **TRADE PRACTICES COMPLIANCE PROGRAM**

Tiny Tots Images Photography Pty Ltd (**Tiny Tots**) will establish a Trade Practices Compliance Program (**Compliance Program**) that complies with each of the following requirements:

#### **ACL & Cross-cultural Training**

1. Within three months of this Undertaking coming into effect, and thereafter at least once a year for the period of the Undertaking, Jennifer Waters and all directors, officers, employees, representatives and agents of Tiny Tots will attend practical training focusing on sections 29, 76 and 79 of the Australian Consumer Law (**the ACL**).
2. Tiny Tots will ensure that the training referred to in paragraph 1 above is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law and / or consumer law.
3. Within three months of this Undertaking coming into effect, and thereafter at least once a year for the period of the Undertaking, Jennifer Waters and all directors, officers, employees, representatives and agents of Tiny Tots will attend practical training relating to Indigenous cross cultural matters.
4. Tiny Tots will ensure that the training referred to in paragraph 3 above is delivered by an appropriate organisation or person with demonstrated knowledge of Indigenous cross cultural matters.
5. Tiny Tots will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraphs 1 above to the Australian Competition and Consumer Commission (**ACCC**) within 14 days of completion of the training verifying that such training has occurred.
6. Tiny Tots will provide a written statement or certificate from the suitably qualified person who conducts the training referred to in paragraphs 3 above to the Australian Competition and Consumer Commission (**ACCC**) within 14 days of completion of the training verifying that such training has occurred

#### **Complaints handling**

7. Tiny Tots will:
  - a. develop procedures for recording, storing and responding to trade practices complaints within two months of this Undertaking coming into effect; and
  - b. provide the ACCC with an outline of the complaint handling system developed within two months of the Undertaking coming into effect.
8. If requested by the ACCC, Tiny Tots will provide, at its own expense, copies of any other documents or information in respect of matters which are the subject of the Compliance Program.

## **Annexure B**

TINY TOTS LETTER HEAD

**DATE**

Dear Sir/Madam

### **Tiny Tots Images Photography Pty Ltd**

It is important that you read and understand this letter. It is about the photographic services which were provided to you by Tiny Tots when we visited you in [Month / year]

#### **ACCC concerns**

The Australian Competition and Consumer Commission (ACCC) have alleged, and Tiny Tots agrees, that the documents we used when we sold you the photographs did not comply with the Australian Consumer Law (ACL). The ACCC investigated these matters and Tiny Tots have given the ACCC an Undertaking to change our contract documents and write to you to tell you what we did wrong.

#### **What we did wrong**

New laws were introduced in 2011, that set out information that must be included in a contract when someone sells you something away from their normal place of business, for example at your house or in your community. The laws also give customers cooling off rights in certain circumstances. This means consumers can get out of the contract in 10 days. Until recently Tiny Tots used contract documents that did not comply with requirements of these new laws in the following ways:

- We failed to provide a Notice on the front page of the Agreement Document that you could use to 'cool off' from the contract;
- We failed to include certain required information about Tiny Tots including, Tiny Tots ACN or ABN, business address, email address or fax number; and
- We did not provide information to you about your cooling off rights and / or we did not tell you the ways you could cool off from the contract.

**What do you have to do?**

Part of the Undertaking Tiny Tots gave to the ACCC was to offer you a refund for money already paid towards your photographs.

You have two options:

**Option ONE – do nothing**

If you choose to continue making payments towards your photographs, you can continue as normal with Tiny Tots until paid in full. You will then receive your photographs. If you choose this option, no further action is necessary

**Option TWO – get a refund**

If you choose to end your Tiny Tots contract and receive a refund of any money which has been paid under the contract, you have to ring Tiny Tots on 1300 659 591 by **[date of four weeks date at top of letter]**and let us know.

**If you choose to get a refund, you will NOT get your photographs.**

If you do not understand or would like to discuss the content of this letter, please contact me on(08) 8379 0499 or via email at [tinytotsimages@bigpond.com](mailto:tinytotsimages@bigpond.com).

Yours sincerely

Jennifer Waters

Managing Director

Tiny Tots Images Photography Pty Ltd

## **Annexure C**

### **Indigenous Communities**

#### **NSW**

Walgett  
Menindee  
Brewarrina  
Weilmoringle

#### **SA**

Point Pearce  
Koonibba  
Bett's Corner  
Ernabella

#### **WA**

Roebourne  
Jigalong  
Meekatharra  
Halls Creek  
Kunanarra  
Fitzroy Crossing  
Wiluna  
Wyndham  
Warmun  
Bidyadanga  
Beagle Bay  
Mud Springs

#### **NT**

Black Water  
Kalano  
Utopia  
Binjari  
Epenarra  
Ali Curung  
Elliot  
Amoonguna  
Santa Teresa  
Kalkarindji  
Alyangula  
Port Keats (Wadeye)  
Bagot  
Tangetyere  
Amata  
Bulla