

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given under section 87B of the *Competition and Consumer Act 2010* (Cth)

by

Australian Vocational Learning Centre Pty Ltd

ACN 136 522 506

Persons giving this undertaking

1. This undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Australian Vocational Learning Centre Pty Ltd (**AVLC**) of Level 2, 16-18 Wentworth Street, Parramatta, 2150 for the purposes of section 87B of the *Competition and Consumer Act 2010* (**the Act**).

Background

2. AVLC is a Registered Training Organisation (**RTO**) with the Australian Skills Quality Authority (**ASQA**) (RTO 91683). It is incorporated pursuant to the Corporations Act 2001 (Cth) and is registered in New South Wales.
3. AVLC carries on business, in trade or commerce, marketing and supplying vocational education and training (**VET**) courses to consumers. Since 2014, it has provided VET FEE-HELP accredited Diploma courses in Marketing, Business, Management and Accounting (**AVLC courses**).
4. An eligible student who enrolled in one or more AVLC courses, each of which consisted of several units of study, was entitled to a Commonwealth student loan called VET FEE-HELP for each of those units of study (**the VET-FEE HELP Assistance Scheme**). VET FEE HELP was not paid by the Commonwealth to the student but was paid directly to AVLC in discharge of the student's liability to pay the course fees.
5. AVLC was required to identify a date (census date) for each unit of study after which a student entitled to VET FEE-HELP incurred a debt to the Commonwealth for each unit of study in which he or she enrolled. The student became liable to pay the debt when his or her income exceeded the minimum income threshold (which in the financial year 1 July 2014 to 30 June 2015 was \$53,345) even if the student did not complete the course in which he or she was enrolled.
6. AVLC used third party marketing agents (**marketing agents**) to market and promote their courses to potential students.
7. The marketing agents used a variety of methods to sell AVLC courses. These methods included:
 - (a) offering laptops and iPads to students as incentives to enrol in the course and telling them that they were free, and
 - (b) telling students the course was free.

8. Some of the marketing agents also appeared to target disadvantaged and vulnerable consumers, including Aboriginal consumers in rural areas and those with low levels of literacy and numeracy skills.
9. The marketing agents sold AVLC courses by approaching consumers at their homes.
10. In the period from 1 July 2014 to 30 April 2015 (**relevant period**), largely through the activity of its marketing agents, AVLC received and processed approximately 225 students for enrolments in AVLC's courses under the Commonwealth's VET FEE-HELP Scheme. Of these students, approximately 195 students were enrolled and incurred a debt to the Commonwealth for the units of study in which they were enrolled.
11. During the relevant period, the course fee for AVLC courses covered by the VET FEE-HELP Assistance Scheme was \$13,000. This fee became payable over three census dates:
 - (a) First census date – 60% of the course fee (\$7,800)
 - (b) Second census date – 29% of the course fee (\$3,770), and
 - (c) Third census date – 11% of the course fee (\$1,430).
12. Of the 195 students who were enrolled and incurred a debt to the Commonwealth during the relevant period, the following number incurred a debt to the Commonwealth under the VET FEE-HELP Assistance Scheme in respect of each census date:
 - (a) First census date – 195 students
 - (b) Second census date – 172 students, and
 - (c) Third census date – 3 students.
13. Assuming all census dates were passed for each of those student enrolments in the relevant period, the total amount of debt owed by students as a result of being enrolled in and having completed AVLC courses under the Commonwealth's VET FEE-HELP Assistance Scheme in the relevant period could have been at least \$2,535,000.
14. AVLC has received payments from the Commonwealth in relation to these students enrolled during the relevant period totalling \$2,173,730.
15. Of these students, AVLC has since cancelled 30 student enrolments and repaid or partially repaid to the Commonwealth amounts totalling \$225,940 in relation to those cancellations.
16. AVLC made a net profit before income tax of \$406,522 from the conduct.

Relevant conduct

17. The ACCC is concerned that in the course of marketing AVLC courses, and recruiting consumers in such courses, some of the marketing agents made false or misleading representations to consumers, including vulnerable and disadvantaged consumers, in order to encourage them to enrol in AVLC courses, including representations to the effect that:
 - (a) the AVLC courses were free or free unless the consumer's income was of an amount which they were unlikely to earn on completion of a course, or at all
 - (b) the AVLC courses were government funded or paid for by the government, and

(c) the AVLC courses were specifically for low income individuals.

18. In some instances, during the relevant period, the marketing agents:

- (a) entered into negotiations with consumers relating to the supply or possible supply of AVLC courses by approaching them at their homes, in circumstances where the consumer did not invite the marketing agent to visit their home for that purpose
- (b) failed to advise consumers of the purpose of their visit, or that they were required to leave the premises immediately if requested, and
- (c) offered inducements, including free iPads or laptops, to consumers, who provided their identification and personal information, to sign up to the AVLC courses.

19. Three specific instances of concern to the ACCC regarding the representations made by the marketing agents to consumers, or the conduct engaged in by them, are as follows:

- (a) Consumer A is a retired nurse who receives the aged pension and lives in Wentworth, New South Wales. She was induced to enrol in an AVLC course by a marketing agent that represented that, because she was on the pension, she would receive a free laptop and that the business management course was also free. The same marketing agent also represented that the course was free because she didn't earn enough money and the Government would pay it directly to the college.
- (b) Consumer B is an unemployed woman who lives in Aboriginal community housing in Dareton, New South Wales. She is the full-time carer for her partner. She was induced to enrol in an AVLC course based on representations that, if she signed up for a course, she could receive a free laptop. The same marketing agent also represented that she did not need to do the course and that if she didn't make a certain amount of money, the government would pay for the course.
- (c) Consumer C is an Aboriginal woman who receives Centrelink payments to support her three children. She lives in Dareton, New South Wales. She was induced to enrol in an AVLC course by a marketing agent that represented that she could receive a free laptop if she joined a course. She was told that she didn't need to actually do the course, but if she earned over \$50,000, she would have to pay for the laptop.

20. AVLC subsequently cancelled the enrolment of Consumers A, B and C, and cancelled their VET FEE-HELP debts and either repaid or re-credited any amounts owing to the Commonwealth.

21. The ACCC considers that by engaging in conduct and making the representations at paragraphs 17 to 19 above, the marketing agents, on behalf of AVLC, have:

- (a) pressured disadvantaged and vulnerable consumers into enrolling in AVLC courses that were not suitable for their education levels and personal backgrounds
- (b) failed to:
 - (i) adequately explain to consumers:
 - A. the VET FEE-HELP Assistance Scheme
 - B. the nature of their obligations if they received VET FEE-HELP assistance, or
 - C. that they would have a debt to the Commonwealth after the census date for each unit of the course they were enrolled in, and
 - (ii) provide to consumers copies of the agreements they signed and were not given information in writing that they had the right to terminate the agreement

within a termination period and the manner in which they could exercise that right.

22. Upon becoming aware of the conduct of the marketing agents, AVLIC has worked cooperatively with the ACCC to resolve its concerns, including by providing this Undertaking. AVLIC also took a range of remedial steps prior to ACCC intervention, including voluntarily repaying or re-crediting VET FEE-HELP amounts owing to the Commonwealth for a number of students and ceasing to use the relevant marketing agents.

Contraventions

23. The ACCC considers, and AVLIC admits, that by some of the marketing agents making the representations, and engaging in the conduct, described in paragraphs 17 to 19 above, AVLIC, through the representations and conduct of its marketing agents:
- (a) engaged in conduct that was misleading or deceptive, or likely to mislead or deceive in contravention of section 18 of the ACL
 - (b) engaged in conduct that was, in all the circumstances, unconscionable within the meaning of section 21 of the ACL
 - (c) made false or misleading representations in contravention of sections 29(1)(g) and 29(1)(i) of the ACL
 - (d) contravened sections 74(a) and 74(b) of the ACL by failing to disclose as soon as practicable and before starting to negotiate with consumers that:
 - (i) their purpose was to seek the consumers' agreement to the supply of the AVLIC courses, and
 - (ii) they were obliged to leave the consumers' premises immediately on request
 - (e) contravened section 76 of the ACL by failing to provide consumers with information in writing concerning their right to terminate the enrolment agreement and the manner in which they could exercise that right, and
 - (f) contravened section 78 of the ACL by failing to give consumers a copy of their enrolment agreement immediately after they signed the agreement.

Commencement of undertaking

24. This Undertaking comes into effect when:
- (a) the Undertaking is executed by AVLIC, and
 - (b) the ACCC accepts the Undertaking so executed.

25. Upon the commencement of this Undertaking, AVLIC undertakes to assume the obligations set out in paragraphs 26 to 35 below.

Undertakings

Future representations

26. AVLIC undertakes that, for a period of five years, commencing on the date of this Undertaking coming into effect, it will not, whether by itself, its officers, employees, contractors, representatives or agents, in trade or commerce, in connection with the promotion, supply or possible supply of AVLIC courses make any representation, whether express or implied, to consumers to the following effect:

- (a) that the courses are free or free unless the consumer's income is of an amount which they are unlikely to earn on completion of a course, or at all, when that is not the case
 - (b) that in order to receive a free laptop computer, or other type of inducement, they need to sign up to an AVLC course and provide identification and personal information, when that is not the case
 - (c) that the courses have government sponsorship, approval or benefits they do not have, including that the courses are government funded or paid for by the government, when that is not the case, and
 - (d) that the courses are specifically for low income individuals, when that is not the case.
27. Further, AVLC undertakes that for a period of five years commencing on the date of this Undertaking coming into effect, it will not, whether by itself, its officers, employees, contractors, representatives or agents enrol a student in an AVLC course without disclosing to the consumer, by telephone and subsequently in writing, or in writing if the discussion occurs in person, the following information for the consumer to retain:
- (a) the cost of the course
 - (b) the process by which the consumer is able to cancel enrolment in a course, including any date by which the consumer is able to cancel from a course without penalty, and
 - (c) the details of any debt the consumer will incur on enrolling in the course including:
 - (i) the total amount of such debt
 - (ii) whether the debt will be owed to the Commonwealth or to another person
 - (iii) the circumstances under which the debt is to be repaid, and
 - (iv) if applicable, the income threshold at which the loan debt will become repayable and the rate of repayment that will apply.

Consumer Redress Program

28. AVLC undertakes, in respect of each consumer:
- (a) who enrolled in an AVLC course during the relevant period
 - (b) who incurred a debt to the Commonwealth under the VET FEE-HELP Assistance Scheme in respect of enrolment in a AVLC course and has not to date had the full amount of that debt cancelled, and
 - (c) notifies AVLC in writing, within 4 months of the date of the Undertaking, that they wish to have their enrolment cancelled, on the basis that:
 - (i) they received false or misleading information from a marketing agent or AVLC and enrolled in the course on that basis, and can provide information to AVLC in support of that claim, or
 - (ii) the unsolicited consumer agreement provisions of the ACL were not satisfied by a marketing agent or AVLC, and they can provide information to AVLC in support of that claim

that it will:

- (d) within 5 months of this Undertaking coming into effect, acting reasonably and in good faith assess notifications made to it under sub-paragraphs 28(c)(i) and 28(c)(ii) above, including any information provided

and, if the information provided supports the claim that the consumer was enrolled in any of the circumstances set out in sub-paragraphs 28(c)(i) and 28(c)(ii) above, that it will:

- (e) within 6 months of this Undertaking coming into effect:
 - (i) cancel the consumer's enrolment and notify the DET accordingly
 - (ii) be liable to and will repay to the Commonwealth any amount paid by the Commonwealth to AVLC to date in purported discharge of the consumer's VET FEE-HELP debt in respect of that course (where not already repaid by AVLC), and
 - (iii) if requested, expunge from the consumer's academic record any reference to the consumer's enrolment in the course, and
- (f) not make any claim for payment from the Commonwealth that may otherwise be made in relation to that enrolment.

29. AVLC further undertakes that it will within 6 months of this Undertaking coming into effect, conduct an internal review of all complaints received from 1 July 2014 to the date of this Undertaking, from students who were enrolled in the relevant period, or persons acting on behalf of such enrolled students, which relate to representations made or conduct engaged in regarding enrolment in an AVLC course. For each such complaint, AVLC must:

- (a) acting reasonably and in good faith, identify any enrolments that occurred in circumstances where the person that enrolled the consumer provided false or misleading information in order to encourage enrolment in an AVLC course, or negotiated an unsolicited consumer agreement without satisfying the requirements under the relevant provisions of the ACL
- (b) undertake further investigation into these enrolments as may be reasonably appropriate having regard to the particulars of the case in order to determine whether any of the circumstances set out in sub-paragraph 29(a) above apply, and
- (c) if the findings of the review and/or investigation show that the enrolment occurred in any of the circumstances set out in sub-paragraph 29(a) above, undertake the actions equivalent to those outlined in sub-paragraphs 28(e) and 28(f) above.

30. AVLC undertakes, in respect of each consumer:

- (a) who enrolled in an AVLC course during the relevant period, and
- (b) who incurred a debt to the Commonwealth under the VET FEE-HELP Assistance Scheme in respect of enrolment in an AVLC course and has not to date had the full amount of that debt cancelled

that it will:

- (c) within 2 months of this Undertaking coming into effect:
 - (i) take all reasonable steps to contact the consumer by phone to alert them to the Undertaking, draw their attention to their rights under paragraph 28 above and advise them of the steps to be taken should they wish to make a claim under paragraph 28 above
 - (ii) send a copy of a notice in the form and terms of **Annexure A** to this Undertaking (**Notice**) to the consumer's mailing address and, if known, to their e-mail address, and
- (d) assess and take action in relation to any responses received from these consumers in accordance with paragraph 28 above.

31. AVLC undertakes that it will, within 2 months of this Undertaking coming into effect, write to the legal centres identified at **Annexure B** to this Undertaking to alert them to the Undertaking and the steps to be taken by a consumer should they wish to make a claim under paragraph 28 above.
32. AVLC undertakes, in respect of each consumer:
- (a) who enrolled in an AVLC course during the relevant period
 - (b) who incurred a debt to the Commonwealth under the VET FEE-HELP Assistance Scheme in respect of enrolment in an AVLC course and has not to date had the full amount of that debt cancelled, and
 - (c) has not to date completed any unit in the course in which they were enrolled, but informs AVLC in writing within 4 months of the date of this Undertaking that they wish to remain enrolled in the course or to continue or resume studying in that course,

that it will allow the consumer to continue or resume studying in that course without incurring any financial penalty that may otherwise apply as a result of those consumers resuming their studies after the expiry of the time period for them to complete the course.

AVLC Website Notice

33. AVLC undertakes that within 21 days of the date of this Undertaking coming into effect, AVLC will publish, or cause to be published, on the website located at the URL www.avlc.edu.au or at such other website as may be agreed by the ACCC in writing (**Website**), a notice in the form and terms of the Notice at **Annexure A** to this undertaking, such that:
- (a) the Notice shall be viewable by clicking a 'click-through' icon located on the homepage of the Website (**Webpage**)
 - (b) the 'click-through' icon referred to in sub-paragraph 33(a) above is located prominently on the Webpage and is not obscured, blocked or interfered with by any operation of the Website
 - (c) the 'click-through' icon shall have the following specifications:
 - (i) "CLICK HERE" located on the header bar at the top of the specified Website:
 - (ii) Once the user hovers over the "CLICK HERE" button the words "IMPORTANT NOTICE TO AVLC STUDENTS" in uppercase 18 point, bold, black sans serif font on a white background, centred and in a bordered box
 - (iii) have the words "Click here for more information" in 14 point, black sans serif font on a white background, centred below the words "IMPORTANT NOTICE TO AVLC STUDENTS" and in the same bordered box
 - (iv) the bordered box and its contents, including the white space, is to operate in the form of a one-click hyper-link to the said notice, and
 - (v) the border will be black
 - (d) the Notice shall occupy the entire webpage that is accessed via the 'click-through' icon referred to above
 - (e) the Notice shall have the following specifications:
 - (i) the heading of the Notice is to be in font that is no less than 12 point bold black sans serif font on white background

- (ii) the body of text of the Notice is to be in font that is no less than 12 point size black sans serif font on white background
- (iii) the border and text of the Notice will be black
- (iv) the Notice will be displayed on a stand-alone webpage that is coded in standard 'HTML' format
- (v) the Notice will not be displayed as a 'pop-up' or 'pop-under' window
- (vi) neither the Website or any of the webpages that are accessed via the 'click-through' icon referred to above shall have in place any mechanism which would preclude search engines from:
 - A. indexing the page, or
 - B. scanning the page for links to follow, and
- (f) the Notice shall remain on the Website for a period of 60 continuous days from the date it is first accessible on the Website.

AVLC Campus Notice

34. AVLC undertakes that, within 14 days of the date of this Undertaking coming into effect, it will, at its own expense:
- (a) publish or cause to be published a campus notice in the form and terms of the Notice at **Annexure A** to this order (**Campus Notice**) and ensure that such Campus Notice:
 - (i) is laminated and not less than A3 in size, and
 - (ii) is in colour and has a bold type heading in at least 36 point type and the body of the notice is in a type not less than 20 points
 - (b) display the Campus Notice at its campuses identified in **Annexure C** (and wherever else it has a campus) in a prominent position at all times that the campus is in operation, and
 - (c) display the Campus Notice in accordance with this Undertaking for a period of 3 months from the date of this Undertaking coming into effect.

Consumer Law Compliance Program

35. AVLC undertakes, at its own expense, to:
- (a) within six months of the date of this Undertaking coming into effect, establish and implement an Australian Consumer Law Compliance Program (**Compliance Program**) in accordance with the requirements set out in **Annexure D**, being a program designed to minimise AVLC's risk of future contraventions of sections 18, 21 and 29, and Part 3.2, Division 2 (unsolicited consumer agreements) of the ACL
 - (b) maintain and continue to implement the Compliance Program for a period of five years from the date of this Undertaking coming into effect, and
 - (c) provide a copy of any documents required by the ACCC in accordance with **Annexure D**.

Information

36. For the purpose of confirming compliance with this Undertaking, the ACCC may make reasonable inquiries of AVLC in respect of its compliance with this Undertaking, including without limitation, to produce information and documents. AVLC undertakes

that it will respond in a timely manner to any such inquiry, including without limitation, by production of the requested information and documents.


Acknowledgments

37. AVLIC acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website
- (b) the ACCC may, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications, and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an Undertaking

Executed by Australian Vocational Learning Centre Pty Ltd (ACN 136 522 506) pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director (SOLE)	Signature of a director/company secretary (<i>delete as appropriate, or entire column if sole director company</i>)
NEIL EDWARD GEORGE CHAPPLE	
Name of director (print)	Name of director/company secretary (print)
Date	Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

22 March 2017.

Date

and signed on behalf of the Commission:



Chairman

Date

22/3/2017

ANNEXURE A

IMPORTANT NOTICE TO AVLC STUDENTS

AVLC has admitted that we have broken the law in the way we enrolled some students into our courses. Upon becoming aware of the problems we have worked with the ACCC to fix them.

This may affect you if you were:

- **enrolled in an AVLC VET FEE-HELP course between 1 July 2014 and 30 April 2015**
- **misled about the course or did not understand what you were signing up to**
- **enrolled into a course at your home or at a place that was not an AVLC office**

If you think this applies to you, you might have a VET FEE-HELP debt from that course. If you would like to have that debt cancelled, you have until _____ to contact AVLC to make a claim. We will then assess your claim and let you know if your enrolment and VET FEE-HELP debt can be cancelled.

Please see below for more details about the conduct.

Australian Vocational Learning Centre Pty Ltd (**AVLC**) has voluntarily provided a court-enforceable undertaking under section 87B of the *Competition and Consumer Act 2010* to the Australian Competition and Consumer Commission (**ACCC**).

AVLC provided the Undertaking to address the ACCC's concerns that AVLC may have contravened the Australian Consumer Law through the conduct of certain third party marketing agents that it engaged to promote AVLC courses.

The ACCC was concerned that between 1 July 2014 and 30 April 2015, AVLC, through the conduct of certain marketing agents:

(a) engaged in misleading or deceptive conduct and made false or misleading representations to certain consumers by falsely representing that VET FEE-HELP courses offered by AVLC were:

- free or free unless the consumer's income was of an amount which they were unlikely to earn on completion of a course, or at all;
- government funded or paid for by the government; and
- specifically for low income individuals;

(b) engaged in unconscionable conduct, with respect to some consumers, by:

- pressuring certain consumers into enrolling in courses that were not suitable for their education levels and personal backgrounds;
- appearing to target disadvantaged and vulnerable consumers, including Aboriginal consumers in rural areas and those with low levels of literacy and numeracy skills; and
- failing to adequately explain the nature of the debt incurred by consumers when enrolling in AVLC VET FEE-HELP courses.

(c) entered into unsolicited consumer agreements with some consumers without disclosing certain information required for such agreements, such as the consumer's right to terminate the agreement within a cooling off period.

AVLC has admitted that by virtue of the conduct engaged in by certain marketing agents on behalf of AVLC, it has contravened sections 18, 21, 29(1)(g), 29(1)(i), 74, 76 and 78 of the Australian Consumer Law.

AVLC has undertaken not to engage in this type of conduct in the future and will provide redress for affected consumers through a Consumer Redress Program. **If you believe you were enrolled into a AVLC VET FEE-HELP course under the circumstances described in this notice, please contact neil@avlc.edu.au** by

AVLC takes its compliance obligations seriously and has therefore, upon becoming aware of the conduct of the marketing agents, worked cooperatively with the ACCC to understand and resolve its concerns, including by resolving issues with its students and providing a court enforceable undertaking.

AVLC has also agreed to implement a Compliance Program to ensure this conduct does not occur again and to ensure future compliance with provisions of the Australian Consumer Law.

The full undertaking from AVLC is available at www.accc.gov.au.

If you have any questions, please contact AVLC on 02 9687 0620 or at neil@avlc.edu.au.

ANNEXURE B

Legal Centre	Address	Contact	
The Legal Aid Commission of NSW – Specialist Civil Law Central Sydney	Level 3 323 Castlereagh Street Sydney NSW 2000	Phone:	(02) 9219 5824
Murray Mallee Community Legal Service	122 Ninth Street Mildura VIC 3500	Phone:	(03) 5023 5966
Consumer Action Law Centre	179 Queen Street Melbourne VIC 3000	Phone:	(03) 9670 5088

ANNEXURE C

Campus	Address	Contact	
Parramatta	Level 2 16-18 Wentworth St Parramatta NSW 2150 Sydney, Australia	Phone:	(02) 9687 0620

ANNEXURE D

REQUIREMENTS FOR AUSTRALIAN CONSUMER LAW COMPLIANCE PROGRAM

Australian Vocational Learning Centre Pty Ltd (**AVLC**) will establish an Australian Consumer Law Consumer Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within one month of the Undertaking coming into effect, AVLC 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**).

Compliance Officer Training

2. Within two months of the Undertaking coming into effect, AVLC will ensure that the Compliance Officer attends practical training focusing on sections 18, 21 and 29, and Part 3.2, Division 2 (unsolicited consumer agreements) of the Australian Consumer Law (**ACL**).
3. AVLC will ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law.

Staff Training

4. AVLC will cause all employees of AVLC whose duties could result in them being concerned with conduct that may contravene sections 18, 21 and 29, and Part 3.2, Division 2 of the ACL to receive regular (at least once a year) training administered by the Compliance Officer (once trained) or a qualified compliance professional or legal practitioner with expertise in competition and consumer law, that focuses on sections 18, 21 and 29, and Part 3.2, Division 2 of the CCA.

Complaints handling

5. Within two months of the Undertaking coming into effect, AVLC will develop procedures for recording, storing and responding to ACL related complaints (**Complaints Handling System**).

Reports to Directors

6. AVLC will ensure that the Compliance Officer reports to AVLC's director every six months on the continuing effectiveness of the Compliance Program.

Compliance Review

7. AVLC will, at its own expense, cause an annual review of the Compliance Program (**the Review**) to be carried out in accordance with each of the following requirements:
 - 7.1. **Scope of Review** – the Review should be broad and rigorous enough to provide AVLC and the ACCC with:

- 7.1.1. verification that AVLC has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of AVLC;
- 7.1.2. the Compliance Reports detailed at paragraph 8 below.
- 7.2. **Independent Reviewer** – AVLC will ensure that each Review is carried out by an independent reviewer (**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 AVLC;
 - 7.2.3. has not acted and does not act for, and does not consult and has not consulted to, AVLC in any competition or consumer law related matters, other than performing Reviews under this Undertaking, and
 - 7.2.4. has no significant shareholding or other interests in AVLC.
- 7.3. **Evidence** - AVLC will use its best endeavours to ensure that each Review is conducted on the basis that the Reviewer has access to all relevant sources of information in AVLC's possession or control, including without limitation:
 - 7.3.1. the ability to make enquiries of any officers, employees, representatives, and agents of AVLC;
 - 7.3.2. documents relating to AVLC's Compliance Program, including documents relevant to AVLC's Complaints Handling System and Staff Training;
 - 7.3.3. any reports made by the Compliance Officer to AVLC's director regarding AVLC's Compliance Program.
- 7.4. AVLC will ensure that a Review is completed within one year of this Undertaking coming into effect and that a subsequent review is completed within each year for three years.

Compliance Reports

8. AVLC will use its best endeavours to ensure that within 30 days of a Review, the Reviewer includes the following findings of the Review in a report to AVLC (**the Compliance Report**):
 - 8.1. whether the Compliance Program of AVLC includes all the elements detailed in paragraphs 1-6 above, and if not, what elements need to be included or further developed;
 - 8.2. whether the Staff Training is effective, and if not, what aspects need to be further developed;
 - 8.3. whether AVLC's Complaints Handling System is effective, and if not, what aspects need to be further developed;
 - 8.4. whether there are any material deficiencies in AVLC's Compliance Program, or whether there are or have been instances of material non-compliance with the Compliance Program (**Material Failure**), and if so, recommendations for rectifying the Material Failure/s¹.

¹ Material Failure means a failure, that is non-trivial and which is ongoing or continued for a significant period of time, to:

- Incorporate a requirement of the Undertaking in the design of the Compliance Program, for example if a Complaints Handling System did not provide any mechanism for responding to complaints; or
- Comply with a fundamental obligation in the implementation of the Compliance Program, for example, if no Staff Training has been conducted within the Annual Review period

AVLC's Response to Compliance Reports

9. AVLC will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:
 - 9.1. provides the Compliance Report to the director of AVLC;
 - 9.2. where a Material Failure has been identified by the Reviewer in the Compliance Report, provides a report to AVLC's director identifying how AVLC can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure.

10. AVLC will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.

Reporting Material Failures to the ACCC

11. Where a Material Failure has been identified by the Reviewer in the Compliance Report, AVLC will:
 - 11.1. provide a copy of that Compliance Report to the ACCC within 30 days of AVLC's director receiving the Compliance Report; and
 - 11.2. inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or
 - 11.3. otherwise outline the steps AVLC proposes to take to implement the recommendations and will then inform the ACCC once those steps have been implemented.

Provision of Compliance Program documents to the ACCC

12. AVLC will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than five years.

13. If requested by the ACCC during the period of five years, AVLC will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:
 - 13.1. an outline of the Complaints Handling System;
 - 13.2. Staff Training materials;
 - 13.3. all Compliance Reports that have been completed at the time of the request;
 - 13.4. copies of the reports to the governing body referred to in paragraphs 7-10 above.

ACCC Recommendations

14. AVLC will use all reasonable endeavours to implement promptly and with due diligence any recommendations that the ACCC may make that the ACCC deems reasonably necessary to ensure that AVLC maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.