

TRADE PRACTICES ACT 1974

**UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION GIVEN PURSUANT TO SECTION 87B OF THE TRADE
PRACTICES ACT 1974**

BY

RADIO CABS (WAGGA) CO-OPERATIVE SOCIETY LTD

BACKGROUND

1. Radio Cabs (Wagga) Co-Operative Society Limited ("the Co-Operative") is registered as a co-operative under the Co-Operatives Act 1992 (NSW).
2. The Co-Operative's principal activity is the provision of radio network services to taxi cab owners and operators. There are approximately 30 taxi cabs operating in this radio network.
3. On 10 February 1998 the Co-Operative issued a "Chairman's Newsletter" which described a Co-Operative Board decision of 9 February 1998 as follows:

"That any driver caught doing a job other than one allocated by the base will invoke a penalty of 1000 kilometers for the car that they are driving at the time at which the offence occurs. The Board further decided that the offending driver will not be allocated any trips from the trip board no matter which car the driver is driving for a period of Twelve (12) months."

The effect of the Co-Operative Board's decision was to enforce a ban on private bookings, including those bookings taken by mobile phone.

4. The ban on private bookings referred to above was also particularised in paragraph 42 of the "Radio Cabs (Wagga) Co-Operative Society Limited Driver's Guide" (the "Driver's Guide") which stated *inter alia* that:
 - "a. All bookings must be placed with the Base by radio or phone".
5. In or about February and March 1998, the Co-Operative maintained a "trip board" system to allocate "trips" or "out of town work" to taxi drivers. Paragraph 43 of the Driver's Guide stated *inter alia* that:
 - "a. All trips handled through the Base are distributed amongst the cars on a roster and score system.
 - b. Trips over 16km (32km round trip) are recorded in divisions of 8km one way.
 - c. Drivers undertaking trips must notify the Base Operator for the information of the owner.
 - d. Without prejudice to the roster order or recording the Base Operator may allocate urgent trips to the most suitable car."

"Trips" or "out of town" jobs or bookings were allocated by the Co-Operative to the taxi operator (or "driver") with the least aggregate kilometres on the "trip board".

6. In or about February and March 1998 the Co-Operative maintained a roster system to allocate jobs or bookings amongst taxi drivers on Mondays and Tuesdays. The roster operated to prevent approximately half the Co-Operative's taxi fleet from seeking work on Monday and Tuesday nights. In or about February 1998, the Co-Operative attempted to extend the operation of the roster system to Sundays.
7. On 11 March 1998 the Commission wrote to the Co-Operative and expressed its concern that the conduct of the Co-Operative might constitute breaches of the restrictive trade provisions of the Act.
8. On 31 March 1998, Sheekey Williams, solicitor for the Co-Operative, wrote to the Commission confirming:
 - A. The active operation by the Co-Operative of a trip board system to allocate out of town work.
 - B. The active operation by the Co-Operative of a roster system for Monday and Tuesday nights.
9. On 11 June 1998, the Commission wrote to the Co-Operative and expressed its view that the Co-Operative's conduct contravened sections 45 and / or 46 of the Act. In particular that:
 - A. A ban on private bookings and the availability of penalties against drivers for private bookings constituted an exclusionary provision in breach of section 45 of the Act. Further, the ban on private bookings would or was likely to substantially lessen competition in the Wagga taxi market in breach of section 45 of the Act.
 - B. The use of roster system to minimise the number of taxis seeking work on Monday and Tuesday nights and public holidays constituted an exclusionary provision in breach of section 45 of the Act.
 - C. The use of a trip board system to distribute out of town work amongst taxi cars constituted an exclusionary provision in breach of section 45 of the Act. Further, the use of the trip board system would or was likely to substantially lessen competition in the Wagga taxi market in breach of section 45 of the Act.
 - D. The Commission considered that the conduct alleged in paragraphs A to C above was likely to constitute a misuse of market power by the Co-Operative for the purpose of restricting or limiting competition and therefore constituted breaches of section 46 of the Act.
10. Sheekey Williams wrote to the Commission on 17 June 1998 advising that the Co-Operative held a board meeting on 10 May 1998 at which it was decided to remove the penalty for private bookings described in paragraph (3) above.
11. On or around 10 May 1998 the Co-Operative had a board meeting at which it was decided to remove the requirement that all bookings must be placed with the Base by radio or phone from paragraph 42 of the Driver's Guide.
12. On or around 14 September 1998 the Co-Operative had a board meeting at which it was decided to dismantle the trip board system and amend paragraph 43 of the Driver's Guide as follows:

"43. TRIPS

 - a. Driver's undertaking trips should notify the Base Operator, for the interests of safety.



- b. Trips shall be allocated to the point car on the appropriate rank.
 - c. There shall be no trip board system operating within the co-operative.”
13. On or around 14 September 1998 the Co-Operative had a board meeting at which it was decided the Co-Operative would not maintain a roster system that specified periods in which taxi operators were not to seek work, and that paragraph 42.A would be inserted into the Driver’s Guide as follows:

“42.A ROSTER SYSTEM

- a. From time to time the co-operative may operate a roster system.
 - b. This system may operate to roster cars on for work.
 - c. There shall be no cars which are rostered off on any shift and any car may work during the roster time, at their discretion.”
14. In order to address the Commission’s concerns, the Co-Operative has agreed to give to the Commission an Undertaking pursuant to section 87B of the Act, which is set out below.


UNDERTAKING

The Co-Operative undertakes for the purposes of section 87B of the Act that it will hereafter, whether by itself, its directors, employees or agents:

1. Ensure no owner, driver or lessee who carries or uses a mobile phone in his/her taxi cab is denied access to the radio network of the Co-Operative or otherwise penalised by reason of having carried or used a mobile phone.
2. Ensure no owner, driver or lessee is denied access to the radio network or otherwise penalised by reason of making a private booking- i.e. a booking obtained by a driver other than through the Co-Operative’s radio network.
3. Refrain from introducing a trip board system for out of town work, or any other system administered by the Co-Operative which prevents the allocation of this work to the nearest available taxi.
4. Refrain from introducing a roster system, which specifies periods in which taxi operators are not to seek work.
5. Within thirty (30) days of the date of this undertaking the Co-Operative send a letter to all its owners, lessees and drivers, in terms acceptable to the Commission, enclosing a copy of the executed undertakings, and briefly explaining their import.

COMPLIANCE PROGRAM

The Co-Operative shall create and maintain, at its own expense, a trade practices compliance program. In summary, the Co-Operative will -

- o Demonstrate commitment to a policy of compliance and embed a culture of compliance throughout the organisation.
 - o Analyse and respond to the trade practices issues resulting in this undertaking.
 - o Take action internally against those responsible for breaches and will not indemnify them.
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- o Provide practical and verifiable training for all those involved in the business of the Co-Operative so that breaches and potential breaches may be prevented or otherwise detected, referred and acted upon.

In particular the Co-Operative shall -

6. Implement this compliance program within thirty (30) days of the signing of the undertaking.
7. Ensure that the compliance program covers all directors, employees and agents of the Co-Operative and its members whose duties could result in their being concerned in conduct that might breach the Act, as well as the activities of each Co-Operative member.
8. Appoint a Director or Secretary Manager of the Co-Operative as Compliance Manager with overall responsibility for compliance.
9. Ensure that the Compliance Manager is accountable to the Co-Operative Board for compliance issues.
10. Ensure all compliance breaches are reported to the Compliance Manager immediately, with appropriate training and steps to prevent repetition.
11. Keep an accurate record of compliance failures and complaints and of the rectification of such failures and complaints.
12. Where compliance issues or concerns are complex, ensure that the Compliance Manager immediately brings them to the attention of the Co-Operative's solicitors.
13. Ensure, for the period of three (3) years and thirty (30) days from the signing of the undertaking, that the Commission is notified within thirty (30) days of any appointment of a new Director or Secretary Manager to the position of Compliance Manager.
14. Provide the Commission with a copy of a new Co-Operative "Driver's Guide" for approval within four (4) months of the signing of the undertaking.
15. Ensure the new Driver's Guide includes:
 - A. a written policy of commitment to compliance with the Act;
 - B. a description of how compliance with the Act will be achieved; and
 - C. a disciplinary policy for breaches of the Act by relevant persons.
16. Ensure all Co-Operative members, lessees and drivers are provided with a copy of the new Driver's Guide within thirty (30) days of the Commission's written notification of its approval.
17. Arrange for all taxi owners, drivers and lessees to attend a seminar within three (3) months of the signing of the undertaking, concerning their rights and obligations under the Act, including sections 45 and 46 of the Act, by suitably qualified compliance professional(s) acceptable to the Commission and in a form approved by the Commission. Such training to be repeated in each of the two (2) years following the date of the first seminar.
18. Procure to its best endeavour the attendance of all owners, drivers and lessees at the abovementioned seminars.



19. The Co-Operative shall cause, at its own expense, an independent audit of its compliance program to be conducted annually from thirty (30) days after the date of acceptance of the undertaking for a period of three (3) years. The audit shall be carried out by a suitably qualified compliance professional, being a person who is not a director, servant or agent of the Co-Operative and being a lawyer, accountant or other compliance professional acceptable to the Commission.
20. The auditor shall review and report on:
 - A. the Co-Operative's adherence to the undertaking;
 - B. the implementation of the compliance program and the achievement of its objectives over the preceding twelve (12) months; and
 - C. any recommended changes to the compliance program that may be necessary to ensure achievement of its objectives.
21. The date for the completion of the first such audit, and the provision of the auditor's report to the Commission shall be one year and thirty (30) days after the signing of the undertaking. Consequently, audit reports shall be prepared and presented by or on the same date in each following year, with the last report due three (3) years and thirty (30) days after the signing of the undertaking.
22. The Commission shall review the recommendations contained in each audit report. Subject to Commission approval the Co-Operative shall implement those recommendations within one (1) month of the Commission's written notification of its approval.

ACKNOWLEDGMENTS

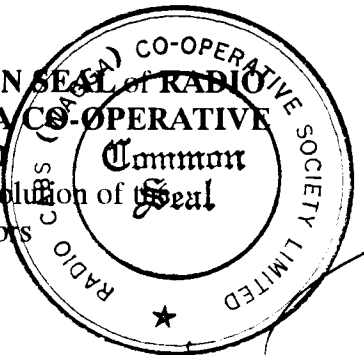
The Co-Operative acknowledges that the Commission will make this undertaking available for public inspection.

The Co-Operative further acknowledges that the Commission will from time to time publish and publicly refer to this undertaking at its discretion.

The Co-Operative further acknowledges that this undertaking in no way derogates from the rights and remedies available to any person arising from the alleged conduct.

The Co-Operative further acknowledges that the reports referred to in paragraph 22 will be held with this undertaking will be held with this undertaking on the Commission's public register.

THE COMMON SEAL of RADIO)
 CABS WAGGA CO-OPERATIVE)
 SOCIETY LTD)
 is affixed by resolution of)
 Board of Directors)



[Signature]

 Secretary Manager

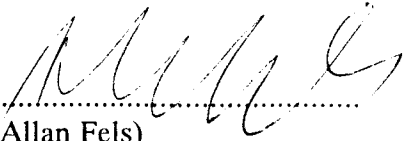
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 Chairman

this *fourteenth* day of *DECEMBER* 1998

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



.....
(Professor Allan Fels)
Chairman

this 23 day of April 1998

