



**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION GIVEN UNDER SECTION 87B**

**BY**

**NATIONAL AUSTRALIA BANK LIMITED**

**PERSON GIVING UNDERTAKING**

1. This undertaking is given to the Australian Competition and Consumer Commission (the Commission) by National Australia Bank Limited ACN 004 044 937 of 500 Bourke Street Melbourne, under section 87B of the *Trade Practices Act 1974* ("the Act").

**BACKGROUND**

2. On 10 November 2000 the National Australia Bank launched its 'Wheat Advance Product' in direct competition to the Australian Wheat Board 'Harvest Payment Product'. The National Australia Bank wheat advance allows wheat growers to deliver grain to Australian Wheat Board pools, receive funds in advance of the wheat pool being sold and have a minimum payment guaranteed. The launch included an advertising campaign featuring a full page advertisement in *The Land*, *The Stock & Land*, *The Weekly Times*, *The Farm Weekly*, and *The Countryman*. The advertisement contained certain representations offering wheat farmers a 'better deal' with a key feature including underwriting costs around 17.5% lower than current options available at that time. Those representations were true during the period 10 November to 13 November 2000.
3. On 13 November 2000 the Australian Wheat Board in response to the National Australia Bank's product launch, reduced its interest rate and underwriting fee to match National Australia Bank's offer to wheat growers.
4. On or about 14 November 2000, National Australia Bank became aware of the Australian Wheat Board's new fee structure.
5. The advertisement was published during the week of 22 November 2000 even though it had become factually inaccurate on 13 November 2000.
6. On 27 November 2000, National Australia Bank reduced its interest rate and underwriting fee. These reductions in effect offered wheat growers savings of approximately 9.4% in comparison to the Australian Wheat Board's product.
7. Although the National Australia Bank had made some amendments to its 'Wheat Advance Product', the advertisement continued to run in the same textual format even though it still contained inaccurate information. Specifically, the advertisement made claims that National Australia Bank product offered a 'better deal' including underwriting costs around 17.5% lower than options available at that time whereas the true position was that the underwriting costs were only 9.4% lower than those of the Australian Wheat Board's

product . This advertisement featured in full page format in *The Land, The Stock & Land, The Weekly Times, The Farm Weekly, and The Countryman* during the week of 29 November 2000.

8. The Commission is concerned that National Australia Bank Limited has breached sections 52 and 53(aa) of the *Trade Practices Act 1974*. Specifically, the company has engaged in misleading and deceptive conduct and made false representations in respect of the comparative assessment of its competitor's product that was inaccurate when the advertisement was published.
9. By virtue of this undertaking, the Commission requires National Australia Bank Limited to:
  - (a) acknowledge that the advertisements were in breach of the sections 52 and 53(aa) of the Trade Practices Act;
  - (b) in accordance with Schedule 1 to implement a Trade Practices Compliance program, to cause the program to be audited and to provide reports of the audits in substantially the form set out in Schedule 2 to the Commission; and
  - (c) undertake for a period of 12 months to refrain from making similar false or misleading comparative advertising claims.
10. National Australia Bank Limited acknowledges that the advertisements that appeared in *The Land, The Stock & Land, The Weekly Times, The Farm Weekly, and The Countryman* over the period 22 November 2000 to 30 November 2000 contained inaccurate information that gives rise to conduct in breach of sections 52 and 53(aa) of the Trade Practices Act.
11. National Australia Bank Limited has offered the Commission this undertaking in accordance with section 87B of the Act.

## **COMMENCEMENT OF UNDERTAKING**

12. This undertaking comes into effect when:
  - (i) the undertaking is executed by National Australia Bank Limited; and
  - (ii) the Commission accepts the undertaking so executed.

## **UNDERTAKINGS**

12. National Australia Bank Limited gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*:-
  - (a) That National Australia Bank acknowledges that the advertisements were in breach of sections 52 and 53(aa) of the Trade Practices Act;

- (b) That National Australia Bank, in accordance with Schedule 1, will implement a Trade Practices Compliance program, will cause the program to be audited and will provide reports of the audits in substantially the form set out in Schedule 2 to the Commission; and
- (c) That National Australia Bank undertakes for a period of 12 months from the commencement of this Undertaking to refrain from making similar false or misleading comparative advertising claims.

**ACKNOWLEDGEMENTS**

- 13. National Australia Bank Limited acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission will, at its discretion, from time to time, publish and publicly refer to this undertaking.
- 14. National Australia Bank Limited acknowledges and accepts that this undertaking in no way affects the rights and remedies available to any person arising from the company's conduct.

**IN WITNESS** of these undertakings and its agreement the common seal of National Australia Bank Limited, ACN 004 044 937 was hereunto affixed in accordance with its Constitution in the presence of:

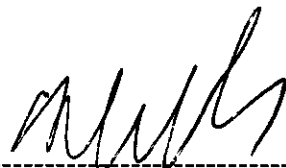
  
Director

  
~~Director~~/Secretary

2104

This 30<sup>th</sup> day of March 2001

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

  
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Professor Allan Fels

17/4/01

Chairman

This

17<sup>th</sup>

day of

APRIL 2001

## SCHEDULE 1

### REQUIREMENTS IN RELATION TO COMPLIANCE PROGRAM

1. The National will use its best endeavours to ensure that the compliance program complies with Australian Standard AS3806.
2. The compliance program shall be implemented progressively in every division of National Australia Bank and will be fully implemented by 30 June 2002.
3. The application and effectiveness of the compliance program shall be audited twice at intervals of twelve to fifteen months (that is, once before 30 September 2003 and once before 30 September 2004) and the National will provide reports of these audits in substantially the form set out in Schedule 2 to the Commission.
4. The audits of the compliance program shall be carried out by Amanda Bodger of Mallesons Stephen Jaques or any other person who is nominated in that respect by the National Australia Bank and who is approved by the Commission (such approval not to be unreasonably denied).

SCHEDULE 2

FORM OF AUDIT REPORT TO BE PROVIDED TO THE COMMISSION

[LETTERHEAD OF FIRM OF SOLICITORS]

Attention: [Addressee]  
Australian Competition &  
Consumer Commission  
Level 35, 360 Elizabeth Street  
MELBOURNE VIC 3000

[Date]

Dear Sir

**National Australia Bank Limited: Trade Practices Compliance Program**

We have been retained by National Australia Bank Limited ("**National**").

We are instructed that the National has agreed with the Commission to lodge with it an audit report in respect of its Trade Practices Compliance Program for each [12/15] month period ending [*June/September 2003 and ending June/September 2004*].

We are instructed by the National's Global Head of Compliance that:

- the National's Trade Practices Compliance Policy has been provided to each Executive General Manager and each General Manager within the National's Business Units in Australia;
- trade practices training has been conducted in each Business Unit within the National in Australia in the past [12] months. Trade practices training has been completed by [*insert number*] employees in the past [12] months;
- the National's trade practices training materials have been updated to reflect changes to trade practices laws made in the past [12] months (if any);
- compliance advisers with trade practices compliance responsibilities have been appointed to each Business Line within the National in Australia;
- each Executive General Manager has reported to the National's Global Head of Compliance on trade practices compliance within his or her Business Unit;
- the National's Executive General Manager, Risk Management has reported to the Board of the National on trade practices compliance within the National;  
and

- the National has systems in place for handling customer enquires and complaints.

We have also been shown material by the National's Compliance Asia Pacific Group which supports the occurrence of the above matters.

Yours faithfully