



TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B

BY

**MOOLOOLABA YACHT CLUB MARINA PTY LTD
ACN 010 359 832**

1. PERSON GIVING THE UNDERTAKING

This undertaking is given to the Australian Competition and Consumer Commission (the Commission) by the Mooloolaba Yacht Club Marina Pty Ltd ACN 010 359 832 (the Marina Co) for the purposes of section 87B of the Trade Practices Act 1974.

2. BACKGROUND

- 2.1 The Marina Co was incorporated in 1982. The Marina Co leases an area of the Mooloolaba Harbour, within which it has constructed the Mooloolaba Yacht Club Marina. The Marina consists of 200 berths available for sublease.
- 2.2 Clauses 19-21 of the sublease agreement require that persons who purchase a sublease over a Marina Co berth must be members of the Mooloolaba Yacht Club.
- 2.3 The Commission understands that a new lease arrangement is proposed that will result in a single lease over the club premises and the marina.
- 2.4 In response to a complaint from a member of the public, on 6 February 2002 the Commission wrote to the Marina Co, advising it may have engaged in conduct which could raise implications under section 47 of the Trade Practices Act 1974.
- 2.5 In response to the Commission's concerns, the Marina Co lodged Notification N91007 on 11 June 2002. Immunity for the notified conduct commenced on 25 June 2002.
- 2.6 On 11 September 2002, the Commission issued a Draft Notice in relation to Notification N91007, proposing to revoke immunity for the notified conduct.
- 2.7 On 10 December 2002, the Marina Co offered the Commission the following undertaking pursuant to section 87B of the Trade Practices Act 1974.

3. COMMENCEMENT OF UNDERTAKING

This undertaking comes into effect when:

- a) the undertaking is executed by the Marina Co; and
- b) the Commission accepts the undertaking so executed.

4. UNDERTAKING

The Marina Co undertakes for the purposes of section 87B of the Trade Practices Act 1974 that it will:

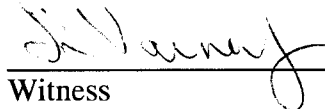
- (i) not enforce clauses 19, 20 and 21 of the existing sub-leases.
- (ii) not at any future date require existing and future sub-lessees to be members of the Mooloolaba Yacht Club solely because of their status as sub-lessees.
- (iii) refrain from making a requirement in any future lease document or contract that the sub-lessees of the Marina Co must be members of the Mooloolaba Yacht Club.
- (iv) make available copies of sub-leases to the Commission upon request and when the proposed new lease arrangement is in place.
- (v) in writing:
 - (a) notify every sub-lessee of this undertaking; and
 - (b) notify every sub-lessee that he or she is not required by the Marina Co to be a member of the Mooloolaba Yacht Club; and
 - (c) offer every sub-lessee the option to resign their membership of the Mooloolaba Yacht Club, pointing out that a consequence of resigning their membership of the Mooloolaba Yacht Club may be that access to Mooloolaba Yacht Club land and facilities will thereafter (where fees for the sub-lessee's access to such land and facilities are not already being received by the Mooloolaba Yacht Club) be subject to the sub-lessee entering into an agreement for access with the Mooloolaba Yacht Club.
- (vi) allocate responsibility to a director of the Marina Co to ensure the company complies with the Trade Practices Act 1974.

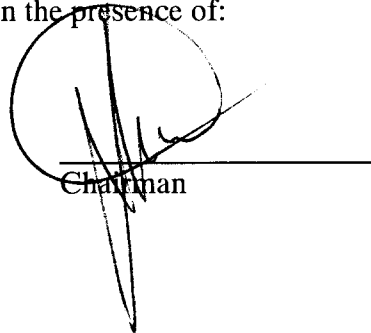
5. ACKNOWLEDGEMENTS

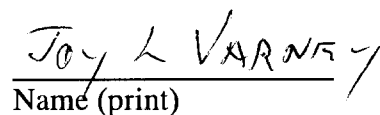
- 5.1 The Marina Co acknowledges that the requirement that Marina Co sublessees be members of the Mooloolaba Yacht Club may contravene sections 47 (6) and (7) of the Trade Practices Act 1974.
- 5.2 The Marina Co acknowledges and accepts that this undertaking will be placed on the Commission's Public Register and agrees that the Commission may otherwise publish and refer to this document at its discretion.
- 5.3 The Marina Co notes that this undertaking in no way derogates from any rights or remedies which may be available to any other person arising from the alleged conduct.

DATED:

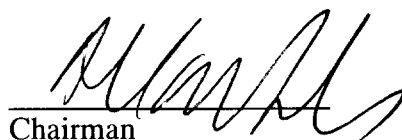
SIGNED for and on behalf of the **MOOLOOLABA YACHT CLUB MARINA PTY LTD ACN 010 359 832** by its Chairman in the presence of:


Witness


Chairman


Name (print)

ACCEPTED by the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**


Chairman

Date: 29/12/2002