

99/34C

FILE No:
DOC:
~~SECTION 87B~~

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

BY

LENNOCK PHILLIP PTY LTD (ACN 008 612 299)

PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (the Commission) by Lennock Phillip Pty Ltd (ACN 008 612 299) of 150 Melrose Drive, Phillip, in the Australian Capital Territory (ACT) under section 87B of the *Trade Practices Act 1974* (the Act).

BACKGROUND

1. Lennock Phillip (Lennock) is incorporated in the ACT and in that Territory, conducts a motor dealership business. Lennock sells both new and used motor vehicles.
2. In July 1999, Lennock caused to be placed on the first page being page B1, of the Motoring Section of the *Canberra Times* of 10 July 1999, an advertisement (**Annexure A**) for used motor vehicles. The advertisement appeared horizontally along the top of page B1 and contained as its heading, in bold block capitals running along the top, the representation

“ B E A T T H E G S T ”

3. The Commission wrote to Lennock alerting it to the Commission's position that the representation was misleading contrary to section 52 of the Act, or may have constituted a false representation under section 53(e) of the Act.
4. In particular, the Commission informed Lennock of its views that:
 - (a) the representation "Beat the GST," implies that the price for used motor vehicles will be greater once the Goods and Services Tax (GST) is introduced, where the actual position is that the response to removal of wholesale sales tax on new motor vehicles will result or will be likely to result, in the short term, in a corresponding fall in the price of used motor vehicles; and
 - (b) the representation "Beat the GST," implies that the price of used motor vehicles will be greater once the GST is introduced, where the actual position is that the response to removal of wholesale sales tax on new motor vehicles will result or will be likely to result, in the longer term, in a lower demand for used motor vehicles, with a subsequent fall in their price.
5. Subsequent to informing Lennock of the views outlined at 4(a) and 4(b) above, it was discovered that an advertisement had earlier been placed on the first page being page B1, of the Motoring Section of the *Canberra Times* of 3 July 1999, for used motor vehicles (**Annexure B**). The advertisement appeared horizontally along the top of page

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B1 and contained as its heading, in bold block capitals running along the top, the representation

“GST PRICE BEATERS GST”

6. After being informed by the Commission of the contravention of section 52 and section 53(e) in respect of the advertisement described at paragraph 2 above, Lennox agreed to cease the use of that headline in all advertising, the publication of a corrective advertisement, and the development and implementation of a trade practices compliance program, and has cooperated fully with the Commission.

COMMENCEMENT OF UNDERTAKING

1. This undertaking comes into effect when:
- (i) the undertaking is executed by Lennox; and
 - (ii) the Commission accepts the undertaking so executed.

UNDERTAKINGS

1. Lennox gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*:-

Conduct Undertakings

- (i) Lennox will not cause to be published the same or similar representations as those described at paragraphs 2 and 5 above, in any newspapers or other media; and
- (ii) Lennox will not make positive representations to consumers where Lennox does not have reasonable grounds for making the representation.

Advertising Undertakings

- (iii) Lennox will, at its own expense, place a corrective advertisement on the first page of the Motoring Section of *the Canberra Times* on the first possible Saturday after execution of these undertakings, in the same terms, form, design and content of **Annexure C**.
- (iv) The advertisement will:
 - (a) be 12cm X 11 column in size; and
 - (b) be located in the top section of the page and be placed horizontally along the width of the same page.
- (v) Lennox will provide to the Commission copies of the advertisement so placed within 5 days of the date of publication.

Trade Practices Compliance Program Undertaking

- (vi) Within two (2) months of the commencement of this undertaking taking effect, Lennock will develop for consideration by the Commission, a trade practices compliance program (program). Once the Commission has approved the program, Lennock will within once (1) month of receipt of such approval, implement the program at its own expense.

The program will incorporate the following features:

(a) Aim:

The program will aim to:

- create a culture of compliance within Lennock
- prevent so far as reasonably possible, any contravention of the Act by Lennock, its directors, employees or agents; and
- include procedures and mechanisms to minimise the likelihood of further contraventions of sections 52 and 53(e) of the Act.

(b) Object:

The object of implementing the trade practices compliance program is to create and maintain compliance in accordance with the *Australian Standard on Compliance, AS-3806*.

(c) Policy:

Lennock will formally adopt, or re-affirm:

- a policy of strict compliance with both the letter and spirit of the Act; and
- adopt, re-affirm and enforce sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act.

(d) Compliance Infrastructure

Lennock will appoint an appropriately qualified named director as the Lennock Compliance Officer with overall responsibility for trade practices compliance.

The compliance program is to cover all directors, employees and agents of Lennock whose duties could result in them being concerned in conduct that might breach the Act (relevant staff).

As part of the compliance program, all information published or provided by Lennock shall be reviewed by a person familiar with the Act, to ensure that such

representations comply with the Act.

(e) Education

Lennock will develop and implement an education program calculated to have the relevant staff conversant with the provisions of the Act to a level where:

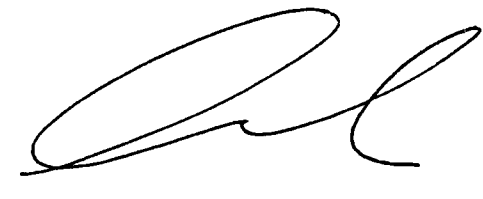
- (i) general staff can avoid obvious contraventions and can identify more complex trade practices problems for referral to the most appropriate person in the Lennock compliance infrastructure;
 - (ii) persons with responsibility within the Lennock compliance infrastructure can effectively carry out these responsibilities; and
 - (iii) Lennock's Compliance Officer can address more complex trade practices issues and (if that person is not legally qualified and able to give the relevant advice), identify issues which require referral to Lennock's solicitors.
- (f) Lennock will make whatever changes to the draft compliance program that the Commission may reasonably require.
- (g) Lennock will then implement the trade practices compliance program within one (1) month of the Commission advising of the changes it requires to the draft program and that the trade practices compliance program will remain in force for a minimum period of two (2) years from the commencement of this undertaking.
- (h) At the end of each twelve month period following its implementation, until the second anniversary of the implementation of the Program, Lennock will submit the Program for review by an independent auditor. The results of these reviews are to be provided to the Commission within four weeks of their receipt by Lennock. Should the reviews identify weaknesses in the Program, Lennock will make suitable amendments to the Program. Lennock will also make any changes to its program that the Commission may reasonably require upon receipt of the review. Lennock will advise the Commission of these amendments within three weeks of receipt of a Commission direction seeking such amendments.

ACKNOWLEDGMENTS

1. Lennock 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.
2. Lennock acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from Lennock's conduct.

Dated : July 1999

Signed on behalf of LENNOCK PHILLIP PTY LTD by



Signature

Signature

Michael Cornock

Print Name

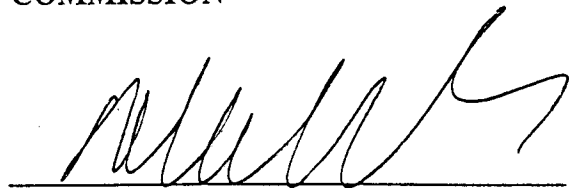
Print Name

Dealer Principal

Sole Director and Sole Secretary

Office held

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION



Chairperson

Dated:

17 
July 1999

Advertisement A

NO. 1 COMMONWEALTH
MAJOR HOLDING
NEW
 Ph: 6282 3522

MOTORING

COMMONWEALTH
MAJOR HOLDING
 Ph: 6282 3522

BEAT THE BEST

\$341,990 **\$277,990** **\$377,990** **\$267,990** **\$357,990**

\$12,990 **\$9,490** **\$11,990** **\$5,990** **\$5,990**

96 HONDA ACCORD VII Auto, A/C, 1988cc, 24-valve, 2000km, 18 months/200,000km warranty. Dealer's full service. **\$341,990**

1000 LANCIA (3) PARK UTILITY Auto, A/C, 2100cc, 16-valve, 1500km, 18 months/200,000km warranty. Dealer's full service. **\$277,990**

1988 HONDA ACCORD VII Auto, A/C, 1988cc, 24-valve, 2000km, 18 months/200,000km warranty. Dealer's full service. **\$377,990**

1988 HONDA ACCORD VII Auto, A/C, 1988cc, 24-valve, 2000km, 18 months/200,000km warranty. Dealer's full service. **\$267,990**

1988 HONDA ACCORD VII Auto, A/C, 1988cc, 24-valve, 2000km, 18 months/200,000km warranty. Dealer's full service. **\$357,990**

1988 HONDA ACCORD VII Auto, A/C, 1988cc, 24-valve, 2000km, 18 months/200,000km warranty. Dealer's full service. **\$12,990**


1988 HONDA ACCORD VII Auto, A/C, 1988cc, 24-valve, 2000km, 18 months/200,000km warranty. Dealer's full service. **\$9,490**

1988 HONDA ACCORD VII Auto, A/C, 1988cc, 24-valve, 2000km, 18 months/200,000km warranty. Dealer's full service. **\$11,990**

1988 HONDA ACCORD VII Auto, A/C, 1988cc, 24-valve, 2000km, 18 months/200,000km warranty. Dealer's full service. **\$5,990**

1988 HONDA ACCORD VII Auto, A/C, 1988cc, 24-valve, 2000km, 18 months/200,000km warranty. Dealer's full service. **\$5,990**

The new Audi Turbo quattro. Pure exhilaration.



Audi

ABSOLUTE BARGAIN!!!
 1988 HONDA ACCORD VII Auto, A/C, 1988cc, 24-valve, 2000km, 18 months/200,000km warranty. Dealer's full service. **\$12,990**

CITY CAR CARE SALES
 150 Melrose Drive, Phillip 6282 2022

ALWAYS BUYING CASH PAID
 150 Melrose Drive, Phillip 6282 2022

AMAZING VALUE!!!
 150 Melrose Drive, Phillip 6282 2022

ATTENTION!
 150 Melrose Drive, Phillip 6282 2022

IT'S EASY!
 150 Melrose Drive, Phillip 6282 2022

Another Car Market
 150 Melrose Drive, Phillip 6282 2022

\$2,600

9 Demonstrator Forte

\$29,990

POLLOCK FORD

COMMONWEALTH NO.1
VICTOR HOLDINGS FOR NEWBY
 Ph: 6782 3522

MOTORING

NO.1 COMMONWEALTH
VICTOR HOLDINGS FOR GOLDEN
 Ph: 6782 3522

GST PRICE BEATERS GST



\$29,990

91 TOYOTA LANDCRUISER DIESEL WAGON A/C
 1100km, Over 12,000km, Full Service History.
 1yr. 11month



\$69,990

91 MERCURY BUC 1000Z4
 American Premier luxury. Cruise. New look to match classmate in the location. 50k 315k



\$19,990

94 HOLDEN BARON
 91 HOLDEN BARON
 and extremely low. 50k 315k



\$8,990

91 HOLDEN BARON A/C. Small motor 1.4L 170k
 91 HOLDEN BARON A/C. Small motor 1.4L 170k



\$16,990

91 HOLDEN BARON A/C. Small motor 1.4L 170k
 91 HOLDEN BARON A/C. Small motor 1.4L 170k



\$38,990

91 V6 COLT CABRIOLET CONVERTIBLE 3.0L
 8,200km. 50k 315k



\$11,990

91 SUZUKI SWIFT GTI. A very popular model with 20k
 8,200km. 50k 315k

Demonstrator Clearance

FALCON FORTE AU \$29,990

DRIVE AWAY PRICE

95 AU Falcon Sedan	5 speed manual	1023 km	2100
95 AU Falcon Sedan	5 speed manual	1023 km	2100
95 AU Falcon Sedan	5 speed manual	1023 km	2100
95 AU Falcon Sedan	5 speed manual	1023 km	2100
95 AU Falcon Sedan	5 speed manual	1023 km	2100
95 AU Falcon Sedan	5 speed manual	1023 km	2100
95 AU Falcon Sedan	5 speed manual	1023 km	2100
95 AU Falcon Sedan	5 speed manual	1023 km	2100

Save \$2,600 on RRP

POLLOCK FORD
 Games Headmark Drive and Melrose Drive Phillip ACT
 0290 80 40 62815722

ATTENTION
 REDUCED TO SELL

95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100

Pollock Holden

ATTENTION
 REDUCED TO SELL

95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
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 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100

Pollock Holden

ALWAYS BUYING
 CASH PAID

95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
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Pollock

It's Easy!

95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
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ALWAYS BUYING
 CASH PAID

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 95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100

Audi Silver Circle
 Pre-owned
 Pre-Checked Pre-terrec. AU01

95 AU Falcon Sedan 5 speed manual 1023 km 2100
 95 AU Falcon Sedan 5 speed manual 1023 km 2100
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Pollock Prestige
 122 Melrose Dr Phillip ACT 0290 80 40 62815722

90802A LEMNOCK APOLOGY 11/8/1999 4:25 PM PAGE 1

An Apology from **Lemnock**

150 Melrose Drive Phillip 6282 2022
GND 78

Lemnock Motors advertised the headline "GSI PRICE BEATERS" in the Canberra Times on Saturday July 2nd and the headline "BEAT THE GSI" in the Canberra Times on Saturday July 10th. Each advertisement advertised a selection of used vehicles. The Australian Competition and Consumer Commission has advised us that they believe the headlines were misleading.

The commission understands that the removal of warehouse sales tax on new motor vehicles will result in a fall in new car prices which would therefore become cheaper. It is the belief of the Commission that reduced new car prices will result in less demand for used cars and that therefore they will also become cheaper.

Lemnock Motors will write to each person who purchased one of the advertised vehicles. If any such purchaser believes that they were persuaded to buy on the strength of any proposed GSI price increase, they may return the vehicle in its "as sold" condition, with a reasonable mileage allowance, for a full refund.

Lemnock Motors wishes to apologise to anyone who may have been misled. This advertisement replaces our usual used car advertisement policy and customers are assured that Lemnock Motors will as always, guarantee the best possible value for money with our usual conditional money back guarantee to all past & future customers.

Australian Competition & Consumer Commission
This corrective advertisement has been placed by Lemnock Motors at the direction of the Australian Competition and Consumer Commission (ACCC) in relation to the Trade Practices Act. It has been paid for by Lemnock Motors.

