

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



**BY**

**WERRIBEE MOTOR TRADERS PTY. LTD. (ACN. 005 886 206)  
TRADING AS WERRIBEE MITSUBISHI AND DAIHATSU**

**PERSON GIVING UNDERTAKING**

FILE No.
ENTITY
D MAN 099/1097

1. This undertaking is given to the Australian Competition and Consumer Commission (the Commission) by Werribee Motor Traders Pty. Ltd. (ACN. 005 886 206) trading as Werribee Mitsubishi and Daihatsu of 69 Synnot Street Werribee, in Victoria under section 87B of the *Trade Practices Act 1974* (the Act).

**BACKGROUND**

1. Werribee Motor Holdings Pty. Ltd. is incorporated in Victoria and in that State, conducts a motor dealership business trading as Werribee Mitsubishi and Daihatsu. Werribee Motor Holdings Pty. Ltd. sells both new and used motor vehicles.
2. In September 1999, Werribee Motor Holdings Pty. Ltd. distributed leaflets to residents in the Williamstown, Laverton, Altona and Altona Meadows area an advertisement (**Annexure A**) for new and used motor vehicles. The advertisement made the following representation

**“BEAT THE GST PRICE INCREASE”**

3. The Commission wrote to Werribee Motor Holdings Pty. Ltd. 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 Werribee Motor Holdings Pty. Ltd. of its views that:

- (a) the representation "BEAT THE GST PRICE INCREASE," implies that the price of 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 PRICE INCREASE" 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. 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, Werribee Motor Holdings Pty. Ltd. agreed to cease the use of that line in all future advertising, the publication of a corrective advertisement to be distributed on Friday 17 and Saturday 18 September 1999, the day of the liquidation sale as well as the distribution of the corrective advertisement to the Williamstown, Laverton, Altona and Altona Meadows areas as soon as is practicable, 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 Werribee Motor Holdings Pty. Ltd., and
  - (ii) the Commission accepts the undertaking so executed.

## UNDERTAKINGS

1. Werribee Motor Holdings Pty. Ltd. gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*:-

### *Conduct Undertakings*

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

### *Advertising Undertakings*

- (iii) Werribee Motor Holdings Pty. Ltd. will, at its own expense, correct the advertising by distributing a leaflet to consumers entering the dealership on Friday 17 and Saturday 18 September 1999, the two days of the liquidation sale, in the form suggested by the Commission;
- (iv) Werribee Motor Holdings Pty. Ltd. will, at its own expense, correct the advertising by way of another leaflet drop as soon as is in the form suggested by the Commission;
- (v) Werribee Motor Holdings Pty. Ltd. will provide to the Commission copies of the advertisement so placed within 5 days of the date of publication of the leaflet.

#### *Trade Practices Compliance Program Undertaking*

- (vi) Within two (2) months of the commencement of this undertaking taking effect, Werribee Motor Holdings Pty. Ltd. will develop for consideration by the Commission, a trade practices compliance program (program). Once the Commission has approved the program Werribee Motor Holdings Pty. Ltd. 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 Werribee Motor Holdings Pty. Ltd.;
- prevent so far as reasonably possible, any contravention of the Act by Werribee Motor Holdings Pty. Ltd., 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:

Werribee Motor Holdings Pty. Ltd. 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

Werribee Motor Holdings Pty. Ltd. will appoint an appropriately qualified named director as the Werribee Motor Holdings Pty. Ltd. Compliance Officer with overall responsibility for trade practices compliance.

The compliance program is to cover all directors, employees and agents of Werribee Motor Holdings Pty. Ltd. 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 Werribee Motor Holdings Pty. Ltd. shall be reviewed by a person familiar with the Act, to ensure that such representations comply with the Act.

(e) Education

Werribee Motor Holdings Pty. Ltd. 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 Werribee Motor Holdings Pty. Ltd. compliance infrastructure;
  - (ii) Persons with responsibility within the Werribee Motor Holdings Pty. Ltd. compliance infrastructure can effectively carry out these responsibilities; and
  - (iii) Werribee Motor Holdings Pty. Ltd.'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 Werribee Motor Holdings Pty. Ltd.'s solicitors.
- (f) Werribee Motor Holdings Pty. Ltd. will make whatever changes to the draft compliance program that the Commission may reasonably require.
- (g) Werribee Motor Holdings Pty. Ltd. 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.

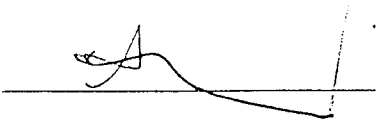
- (h) At the end of each twelve month period following its implementation, until the second anniversary of the implementation of the program, Werribee Motor Holdings Pty. Ltd. will submit the program for review by an independent auditor. The results of these reviews are to be provided to the Commission within four weeks of their receipt by Werribee Motor Holdings Pty. Ltd.. Should the reviews identify weaknesses in the program, Werribee Motor Holdings Pty. Ltd. will make suitable amendments to the program. Werribee Motor Holdings Pty. Ltd. will also make any changes to its program that the Commission may reasonably require upon receipt of the review. Werribee Motor Holdings Pty. Ltd. will advise the Commission of these amendments within three weeks of receipt of a Commission direction seeking such amendments.

## **ACKNOWLEDGMENTS**

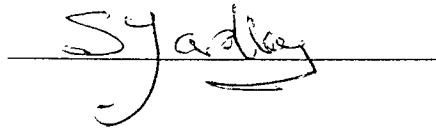
1. Werribee Motor Holdings Pty. Ltd. acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission will, at its discretion, from time to time, publish and publicly refer to this undertaking.
2. Werribee Motor Holdings Pty. Ltd. acknowledge and accept that this undertaking in no way derogates the rights and remedies available to any person arising from Werribee Motor Holdings Pty. Ltd. conduct.

Dated : 24 September 1999

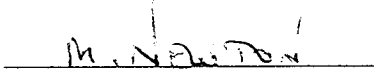
Signed on behalf of WERRIBEE MOTOR HOLDINGS PTY. LTD by



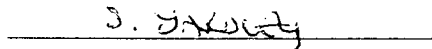
Signature



Signature



Print Name

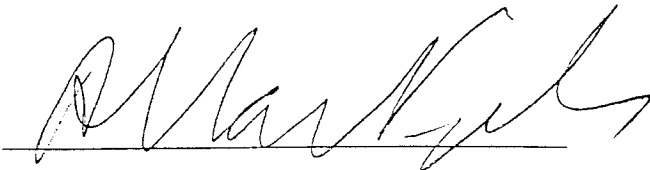


Print Name

Director

Director/Secretary

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**



Chairperson

Dated: 30 September 1999

# NEW AND USED CAR LIQUIDATION



Werribee

MITSUBISHI

67-73 Synnot St. WERRIBEE

9741 5300

Werribee

DAIHATSU



**2 DAYS ONLY 17TH & 18TH SEPTEMBER 1999**

Mitsubishi Motors and Daihatsu Australia have given us generous bonuses to allow us to clear all our stock.

This is your chance to save a bundle!

**NEW CARS STARTING FROM \$9990**

**Magna/Lancer/Mirage/Triton/Pajero/  
Verada/Nimbus/Challenger**

**OUT THEY GO!**

**Siron/Charade/Terios/Pyzar/Handivan**

**OUT THEY GO!**

**USED CARS! Huge savings  
BEAT THE GST PRICE INCREASE**

We are overstocked with used vehicles and we must sell them to the public at the right price rather than ship them off to trade auctions

We have a huge range of vehicles starting at \$5990

**NOW REPEAT NOW IS THE TIME TO BUY A USED VEHICLE.**

Expert valuers on site - our financier is offering special finance rates on the days - bring your car & cheque book - no one will be disappointed.

**THIS SALE IS FOR TWO DAYS AND IS EXCLUSIVELY AT**

**Werribee Mitsubishi and Daihatsu LMCT 5813**

**67-73 Synnot Street Werribee Ph: 9741 5300**