



TRADE PRACTICES ACT 1974 - SECTION 87B  
UNDERTAKING

**Person giving Undertaking:**

This undertaking is given to the Australian Competition and Consumer Commission ("the ACCC") by Woolworths (South Australia) Pty Limited (ACN 007 873 118) ("Woolworths") under section 87B of the *Trade Practices Act 1974* ("the Act").

**Background:**

The ACCC proposes to institute proceedings in the Federal Court of Australia against Woolworths, the Arnhem Club Incorporated, Rhonwood Pty Limited and certain persons acting on behalf of Rhonwood Pty Limited ("the proceedings"). The proceedings will involve allegations of price-fixing conduct in the Nhulunbuy take-away alcohol market and/or the Nhulunbuy alcohol market, in breach of sections 45(2)(a)(ii) and 45(2)(b)(ii) of the Act.

The allegations and Woolworths' participation in the alleged contraventions of the Act are set out in the Statement of Claim to be filed in the proceedings. Woolworths has admitted the allegations made against it in the Statement of Claim, including the contraventions set out in paragraphs 46 and 47, and has agreed with the ACCC on the terms of consent orders to be sought from the Court to resolve the proceedings in respect of Woolworths.

**Undertakings:**

As part of the resolution of the proceedings, Woolworths has agreed to provide to the ACCC the undertakings contained herein that:

1. It will make a donation in the sum of \$150,000.00 to the Nambara School Council (Yirkala CEC) on the Gove Peninsula for the purpose of an alcohol harm reduction, prevention, education or rehabilitation program in Nhulunbuy and the surrounding communities.
2. It will upgrade and maintain its trade practices compliance program in accordance with the Australian Standard AS 3806 to ensure, so far as reasonably possible, the company and its relevant employees are not involved in further contraventions of the Act.
3. It will, if requested by the ACCC, provide the assistance and cooperation referred to in clauses 5 and 6 of this undertaking.

The ACCC has agreed to accept the undertaking from Woolworths under section 87B of the Act.

**Commencement of Undertaking:**

1. This undertaking comes into effect on the later of when:

- (a) the undertaking is executed by Woolworths;
- (b) the undertaking so executed is accepted by the ACCC; and
- (c) the Court makes consent orders in respect of Woolworths.

### **Obligations under the Undertaking:**

#### **Donation**

- 2. Woolworths will make a donation in the sum of \$150,000.00 to the Nambara School Council (Yirrkala CEC) on the Gove Peninsula for the purpose of an alcohol harm reduction, prevention, education or rehabilitation program in Nhulunbuy and the surrounding communities.

#### **Trade Practices Compliance Program**

- 3. Woolworths has in place a Trade Practices Compliance Program ("the Program") in respect of the Act, the object of which is to ensure compliance with the Act by Woolworths and relevant officers, employees and agents. The Program includes the following features:
  - (a) Woolworths has appointed Mr Gerard Rohl, of Woolworths Legal Department as the Compliance Officer with overall responsibility for Trade Practices Compliance under Mr Rohan Jeffs, General Manager Corporate Services.
  - (b) The Program requires training of management involved in Woolworths Retail Operations and Buying and Marketing functions, including stores managers, liquor managers and their respective deputies, in a manner appropriate to ensure that all such management are conversant with the provisions of the Act to a level where:-
    - (i) they can avoid obvious contraventions and can identify more complex potential trade practices problems for referral to the appropriate person in the Woolworths compliance infrastructure;
    - (ii) persons with responsibilities within the Woolworths compliance infrastructure can effectively carry out those responsibilities.
  - (c) The Woolworths Compliance Officer, Mr Rohl, can address more complex trade practices issues and identify issues which require referral to its external solicitors.
  - (d) The Program includes procedures for monitoring the implementation of the educational and training requirements of the Program including the recording of training given to management including the names of those involved, the dates upon which training was given and by whom and the nature of the training.
  - (e) The Program includes a procedure for monitoring compliance with the Act including the recording of any consistent questions or major issues raised by management or third parties, the response given to those questions, any complaints made, and the response given to any complaints.

4. Woolworths undertakes that:

- (a) Within 60 days of these undertakings Woolworths will forward to the ACCC for comment a complete copy of Woolworths' current Program with a view to the ACCC identifying any improvements or suggestions which it considers would assist Woolworths in avoiding the type of contraventions which occurred in this matter.
- (b) Woolworths will incorporate into the Program and implement as part of the Program any reasonable changes to the Program that are so recommended by the ACCC and endorsed by Woolworths' external solicitors in writing.
- (c) Woolworths will commence the implementation of the Program within 90 days of the ACCC agreement to the changes to the existing Program as referred to above.
- (d) The Program will remain in force for a minimum period of 5 years from the date of its implementation and during that time will be varied by addition or omission to accord with any relevant changes to the Act.
- (e) At the end of the 24 month and 48 month periods following the execution of this undertaking, Woolworths will cause an independent auditor who will be an independent solicitor or compliance professional as notified by the ACCC to review and report to the ACCC on:
  - (i) the implementation of the Program and achievement of its objectives over the preceding reporting period; and
  - (ii) any recommended changes to the Program that may be necessary to ensure achievement of the objectives set out in this undertaking.
- (f) Woolworths will cause the independent auditor to complete the review and provide a copy of his or her report to Woolworths and the ACCC within 60 days at the end of each reporting period.
- (g) Woolworths will incorporate into the Program and implement as part of the Program all reasonable changes to it that are recommended by the independent auditor's report and are also:
  - (i) approved by the ACCC in writing, if such approval is advised to Woolworths within 60 days of the ACCC receiving the report of the independent auditor; and
  - (ii) endorsed by Woolworths' external solicitors in writing.

**Assistance:**

5. Woolworths will, if requested by the ACCC:

- (a) assist and facilitate (but not require or compel) its current employees; and

- (b) request (but not require or compel) former employees;  
to cooperate with the ACCC:
- (c) in the preparation of affidavits or statements on matters which are the subject of the proceedings; and
- (d) in giving evidence in Court consistent with any such affidavits or statements and in making themselves reasonably available to the ACCC or its legal representatives to discuss such evidence.
6. Woolworths will, if requested by the ACCC, continue to provide documents and information in the possession of Woolworths in respect of matters the subject of the proceedings.

**Acknowledgments:**

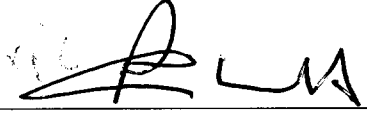
7. Woolworths acknowledges and accepts that:
- (a) the ACCC may make this undertaking available for public inspection including by placing it on a register, publishing it and allowing third parties to publish it, and that the ACCC may from time to time publicly refer to this undertaking, including by way of media release;
- (b) this undertaking in no way derogates from the rights and remedies which may be available to any other person arising from the alleged conduct.

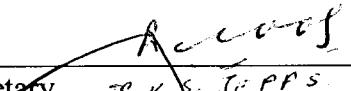
**Execution:**

IN WITNESS of these undertakings and this agreement:


The Common Seal of Woolworths )  
(South Australia) Pty Limited (ACN 007 873 118) )  
was affixed by authority of resolution of )  
the Board of Directors in the presence of: )



  
\_\_\_\_\_  
Director *D.C. Corbett*

  
\_\_\_\_\_  
Secretary *R.K.S. Jeffs*

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION

  
.....  
Chairperson

Dated: *16 Dec 2002*