

**TRADE PRACTICE ACT 1974****UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
GIVEN FOR THE PURPOSE OF SECTION 87B OF THE TRADE PRACTICES ACT 1974****BY****MINMETALS AUSTRALIA PTY LTD  
(ACN 006 868 033)****BACKGROUND**

1. Minmetals Australia Pty Ltd ("Minmetals"), ACN 006 868 033, is a company incorporated in Victoria.
2. Minmetals' core activities are in the steel business, from raw material supply to trading in semi-finished and finished steel products. However, a small division within Minmetals also conducts a business of importing and wholesaling giftware, home ware and toys through the registered business name "MaChoice" (VIC B1654824Y).
3. Section 65C of the *Trade Practices Act 1974* ("the Act") prohibits the supply of goods in respect of which there is a notice under that section declaring goods to be unsafe ("the Notice"). On 18 March 2003, an interim Unsafe Goods Notice on children's toy dart guns with suction darts ("the Banned Goods") was introduced for 18 months by the Commonwealth Minister for Consumer Affairs.
4. On or about 24 April 2003, Minmetals/MaChoice purchased the assets of Sharp Stone Pty Ltd (ACN 097 762 224) which included the Banned Goods. Minmetals was unaware of the Notice.
5. On 31 July 2003, the Commission notified Minmetals that MaChoice was supplying products subject to an interim ban under section 65C of the Act.
6. In response to the Commission's letter of 31 July 2003, Minmetals immediately ceased supplying the Banned Goods to its customers. Approximately 546 units had been supplied to customers as at 31 July 2003. Further, by facsimile dated 18 August 2003, Minmetals provided the Commission with the names of some of the customers (ie, retailers) it supplied with the Banned Goods, the brands of the Banned Goods and the number and the dates of the supply. On 19 August 2003, Minmetals undertook action to recall the Goods at a retail level. Minmetals advised its customers immediately to cease supply of the Banned Goods, remove all existing stock from their stores and provided each retailer with multiple copies of an in-store notice informing consumers of the need to return the Banned Goods for a full refund.
7. On 27 August 2003, the Commission requested Minmetals undertake further actions, in addition to the actions described in paragraph 6, and enquired whether Minmetals would be prepared to do so by way of an enforceable undertaking under section 87B of the Act.
8. In order to address the potential safety hazards posed by supplying the Banned Goods and the concerns of the Commission, Minmetals agreed and provides this Undertaking to the Commission under section 87B of the Act.

## **COMMENCEMENT OF UNDERTAKING**

9. This Undertaking comes into effect when:
- (a) the Undertaking is executed by Minmetals; and
  - (b) the Commission accepts the Undertaking so executed.

## **UNDERTAKINGS**

10. Minmetals undertakes to the ACCC for the purposes of section 87B of the Act that it will:
- (a) refrain from supplying or offering to supply the Banned Goods while they are subject to a ban;
  - (b) refrain from supplying or offering to supply, at any time in the future, products which do not comply with the consumer protection notice;
  - (c) place the recall notice attached as Annexure A of this Undertaking in the local community newspapers circulating in the localities in which the Banned Goods were supplied by MaChoice, including in the Vietnamese and Chinese newspapers in these areas;
  - (d) provide all retailers supplied with the Banned Goods with the recall notices referred to in paragraph (c), including Vietnamese and Chinese language versions, and a letter attached as Annexures B of this Undertaking;
  - (e) use reasonable endeavours to secure the cooperation of all of the retailers supplied with the Banned Goods to ensure that the recall notices are placed in prominent positions within the shop premises of each retailer and are displayed by each retailer for a reasonable period of time;

## **TRADE PRACTICES COMPLIANCE PROGRAM**

11. Further, to minimise the risks of re-occurrence of such conduct in the future, Minmetals undertakes that, within 28 days of the date of execution of this undertaking, it will identify and retain an appropriately qualified compliance professional ("the compliance professional") for the purpose of developing an appropriate compliance program to ensure Minmetals's ongoing compliance with Part V of the Trade Practices Act. The compliance professional must be independent of Minmetals and must not have been retained by Minmetals, either currently or in the past, for any other work.
12. The compliance program aims to create a culture of compliance within Minmetals through Minmetals' formal adoption or reaffirmation of a policy of strict compliance with both the letter and spirit of the TPA and through the adoption or reaffirmation and enforcement of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the TPA.
13. Minmetals undertakes that it will cause the compliance professional to analyse Minmetals's business and develop a program which is:
- (a) Compliant, in the compliance professional's opinion, with AS-3806; and

- (b) Likely, in the compliance professional's opinion, to prevent future contraventions of Part V of the Trade Practices Act by Minimetals.
14. Minimetals will forward the compliance program to the ACCC for comment within 60 days of the execution of this undertaking and implement the compliance program, with any amendments the ACCC might suggest, within 30 days of the ACCC's comments on the program.
  15. As part of the implementation of the Compliance program, Minimetals will:
    - appoint a senior manager to oversee TPA compliance matter;
    - conduct regular TPA training for its staff, including senior managers;
    - establish a complaint handling system compliant with AS4269 Complaints Handling;
    - ensure that compliance with the TPA is a Key Performance Indicator for all employees, and that it is discussed at regular Board and/or senior management meetings; and
    - develop a register of TPA related breaches and/ or complaints.
  16. The Program is to cover all directors, employees and agents of Minimetals whose duties could result in them being concerned in conduct that might breach the TPA ("the Relevant Staff"). The Program will include a specific reference to the duty of care of company directors in respect of the TPA and compliance with prescribed consumer product safety standards.
  17. The compliance program will remain in force for a minimum period of two (2) years from the date of its implementation, and during that time [the ACCC may request its amendment] [both parties may agree to amend it] to accord with relevant changes to the Trade Practices Act 1974 (TPA).
  18. At the end of each twelve (12) month period following the implementation of the Program, Minimetals will cause a suitably qualified independent compliance professional ("the Independent Third Party") to review and report on:
    - i. the implementation of the Program and the achievement of its objectives over the proceeding twelve (12) months; and
    - ii. any recommended changes to the Compliance Program that may be necessary to ensure achievement of its objectives.
  19. The Independent Third Party will qualify as independent on the basis that he or she:
    - i. is not a present or past staff member or director of Minimetals;
    - ii. has not acted or does not act for Minimetals;
    - iii. is not retained by Minimetals in any other capacity, either currently or in the past;
    - iv. has not and does not provide consultancy or other services for Minimetals; and
    - v. has no substantial shareholding or other interests in Minimetals.
  20. The review conducted by the Independent Third Party may be based on but not limited to:
    - i. investigations to find out how compliance processes are implemented and understood by line management and line staff

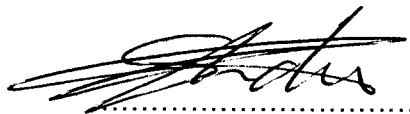
- ii. assessing how sales agents actually represent the company's product to the customer.
  - iii. talking to customers about their experience of the company
  - iv. Minmetals' records;
  - v. Minmetals' complaints register;
  - vi. any documents recording attendance by Minmetals' staff at training seminars on the TPA and compliance with prescribed consumer product safety standards;
  - vii. documents created by Minmetals' consultants and solicitors for use in Minmetals' compliance program;
  - viii. any documents relevant to Minmetals' training or induction program;
  - ix. any other relevant documents; and
  - x. a select number of oral reports sought from Minmetals' staff.
21. Minmetals will cause the Independent Third Party to complete the review and provide a copy of its report to Minmetals and to the Commission within one month of the end of each twelve (12) month period. Minmetals will make whatever changes the Commission may reasonably suggest in relation to the Program.
22. The ACCC may request for an audit of the compliance system, at Minmetal's expense, between the regular audit periods described under Clause 18 above, if the ACCC has sufficient reason to suspect that the compliance program is not being implemented effectively.
23. Minimetals will, if requested by the ACCC, provide documents and information in respect of matters which are the subject of the compliance program resulting from this undertaking.

#### **ACKNOWLEDGEMENTS**

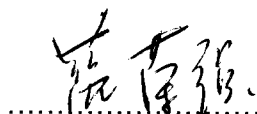
13. Minmetals acknowledges that the Commission will make this Undertaking available for public inspection.
14. Minmetals acknowledges that the Commission will, from time to time, publicly refer to this Undertaking.
15. Minmetals acknowledges and accepts that this Undertaking in no way derogates from the rights and remedies available to any person arising from the conduct described in this Undertaking.

**IN WITNESS TO THESE UNDERTAKINGS**

IN WITNESS to this Undertaking the Common Seal of Minmetals Australia Pty Ltd (ACN 006 868 033) was affixed hereunto by authority of the Board of Directors in the presence of:



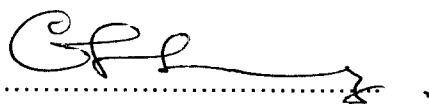
.....  
Director



.....  
Director/Secretary

This 14<sup>th</sup> day of October 2003

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



.....  
Chairman

This 23<sup>rd</sup> day of October 2003

**ANNEXURE A**

Please note the Recall Notice is not to scale

# Product Safety Recall

## Children's Toy Dart Guns with Suction Darts

In August 2003, Minmetals Australia Pty Ltd ("Minmetals"), following advice from the Australian Competition and Consumer Commission ("ACCC") commenced a voluntary recall of the following products.

Rongye – "Air Gun Target Game"  
(Item No. 138F2)



No Brand – "Shot Game"  
(Item No. 3387)



Minmetals advises consumers who have purchased these products that these products are subject to an Interim Ban as they are unsafe and potentially pose a serious risk to the safety of young children. In particular, the darts represent a choking hazard.

The above products have been supplied by Minmetals since 23 May 2003 at the following retail stores:

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- 
- 
- 

Please STOP using any of the above products immediately.

You can return these products for a full refund to any of the stores named above.

This recall is limited to the products supplied by Minmetals. No other Minmetals' products have been affected.

We apologise for any inconvenience caused.

If you require any additional information, please contact us at:  
MaChoice (a division of Minmetals Australia Pty Ltd)  
F2, 85 Fairbank Road, Clayton South, Vic 3169  
Tel: (03) 9548 5885 Fax: (03) 9548 5528

**See [www.recalls.gov.au](http://www.recalls.gov.au) for  
Australian Product Recall Information**

**ANNEXURE B**



**[ON MACHOICE'S LETTERHEAD]**

**PRODUCT SAFETY RECALL**

Dear Customer,

**Recall of children's toy dart guns with suction darts (Item Nos:3387 and 138F2)**

MaCHOICE is undertaking an immediate product recall of the toy dart guns with suction darts - Item Nos: 3387 and 138F2 ("**Products**") supplied by us.

We have been notified by the Australian Competition and Consumer Commission (ACCC) that the Products are subject to an Interim Ban issued on 18 March 2003. These Products have been declared unsafe and potentially pose a serious risk to the safety of young children.

We request that you immediately undertake the following actions:

1. Withdraw the Products from sale.
2. Place in-store notices (enclosed for your reference) in your store(s) informing your customers of the need to return the Products to your store for a full refund.
3. Return the Products to MaCHOICE for a full refund - proof of purchase from MaCHOICE may be required.

We apologise for the inconvenience to customers and retailers. This recall does not affect any other products supplied by MaCHOICE.

For further information contact:

Chris Ying  
(03) 9548 5885