



## SETTLEMENT AGREEMENT

MADE BETWEEN: THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION

HAMILTON ISLAND ENTERPRISES LIMITED

HAMILTON ISLAND LIMITED

GWENDA BERNICE EVANS

JALPALM PTY LTD

## BACKGROUND

1. The Australian Competition and Consumer Commission (the "Commission") has commenced Federal Court Proceedings, in Brisbane (Action No QG65 of 1996), including a representative action, on behalf of Gwenda Bernice Evans ("Gwen Evans") and her family company, Jalpalm Pty Ltd ("Jalpalm") against Hamilton Island Enterprises Limited ("HIEL") and Hamilton Island Limited ("HIL") arising out of conduct that occurred in 1994 at a time when Jalpalm held certain concessions on Hamilton Island.
2. The Commission asserts that the conduct of HIEL and HIL (set out in detail in the Statement of Claim) constitutes unconscionable conduct, and in certain respects, misleading conduct, in contravention of the *Trade Practices Act*, namely, Sections 51AA and 52 of the Act.
3. The Commission recognises that the conduct of concern to it occurred at a time prior to the appointment of the current Board of Directors of HIEL and HIL and its new management team.
4. The Commission further recognises that the new Board, Chairman and Chief Executive Officer, have caused extensive enquiries to be undertaken of the allegations and concerns raised by the Commission and both HIEL and HIL have sought to expeditiously and enthusiastically resolve these matters and provide Jalpalm and Gwen Evans with a substantial

5. HIEL and HIL acknowledge that Gwen Evans and Jalpalm have suffered loss by reason of the conduct set out in the Statement of Claim and that prior management ought to have resolved these issues early, put Jalpalm and Gwen Evans in the position they would have been in had the conduct not occurred and moved to alleviate the stress and dislocation suffered by Gwen Evans, at the earliest possible opportunity. HIEL and HIL regret that this did not occur and accept that the conduct in 1994 may well amount to unconscionable conduct and/or misleading conduct in contravention of the Act.
6. The Commission, HIEL, HIL, Jalpalm and Gwen Evans now wish to resolve all issues of any kind between them and settle the Federal Court Proceedings on the following basis:

#### THE TERMS

1. HIEL and HIL shall pay and be responsible, jointly and severally, for the payment of \_\_\_\_\_ to the Commission within 30 days of the making of the Orders referred to in Clause 7. This amount shall be paid as follows:
  - \_\_\_\_\_ to Jalpalm;
  - \_\_\_\_\_ to Gwen Evans;
  - \_\_\_\_\_ to the Commission, being part payment of the Commission's legal expenses.
2. HIEL and HIL acknowledge that it is fundamentally important for all trading corporations and their staff to understand and properly comprehend all of the requirements of the *Trade Practices Act* and comply with the Act both in its spirit and its terms and, to that end, HIEL and HIL undertake, within 30 days of the date of the making of the Orders referred to in Clause 7, to

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produce an outline of the elements of a Trade Practices training or compliance program for all management staff and set a date for the delivery of an awareness seminar or seminars and a timetable for the development of a Compliance Manual for all management staff by 31 October 1996. This will be done in consultation with the Commission.

3. The undertaking recited in Clause 2 is an undertaking given to the Commission for the purposes of Section 87B of the *Trade Practices Act*.
4. The ACCC, HIEL and HIL will, by their lawyers, on the mention date for the noting of the settlement and the making of the Orders referred to in Clause 7, read and produce to the court a statement in the following terms:

See attachment.

5. Each of the parties accepts and agrees that this settlement is entirely confidential in relation to the amount of the monetary settlement and that to disclose the amount of the monetary settlement, except as required by law, is prejudicial and damaging to both companies.
6. In consideration of the payment referred to in Clause 1, the Commission, Gwen Evans and Jaipalm release and discharge HIEL, HIL and all individuals referred to in the Statement of Claim from all claims arising directly or indirectly out of any of the matters referred to in the Statement of Claim in Action No QG65 of 1996 and agree that this settlement shall be treated as a full and final resolution of all matters in issue. HIEL and HIL release and discharge Jaipalm and Gwen Evans from all claims for monies owing to either company.
7. Action No QG65 of 1996 shall be listed for mention before the Federal Court of Australia, in Brisbane, and:
  - (a) adjourned pending completion of Clause 1 of the terms of settlement;

- (b) adjourned with no Order as to costs;
  - (c) discontinued by the Commission with the consent of HIEL and HIL upon payment to the Commission of the amount referred to in Clause 1, with no order as to costs.
8. In the event that either HIEL or HIL fail to pay the settlement sum referred to in Clause 1 within the time required by Clause 1, for any reason, the Commission shall be entitled to re-list Action No QG85 of 1996 and shall be entitled to enter Judgment against both HIEL and HIL for an amount of \_\_\_\_\_ together with the costs associated with applying to the Court for and obtaining such a Judgment or to otherwise continue the action should the Commission choose to do so.
9. The settlement shall be deemed to have occurred on the *12<sup>th</sup>* day of July, 1996.

THE COMPANY SEAL of HAMILTON ISLAND ENTERPRISES LIMITED was hereunto affixed pursuant to a resolution of the Directors in the presence of *W. R. KIRKPATRICK* a Director and *G. P. HEROLDT* Secretary this *11<sup>th</sup>* day of July 1996 before me:



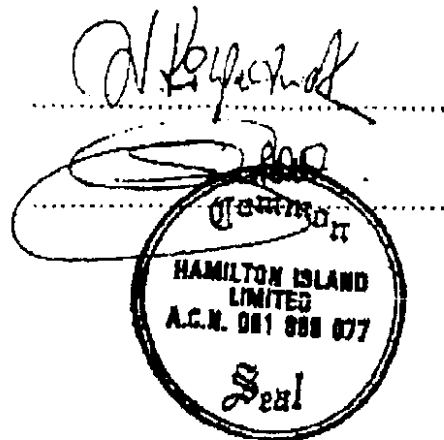
*[Handwritten signature]*  
 \_\_\_\_\_  
*[Handwritten signature]*  
 \_\_\_\_\_

*[Handwritten signature]*  
 \_\_\_\_\_  
 A Justice of the Peace

*OK*

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THE COMPANY SEAL of HAMILTON  
 ISLAND LIMITED was hereunto affixed  
 pursuant to a resolution of the Directors  
 in the presence of W. R. KIRKPATRICK  
 a Director and G. P. HERNDON  
 Secretary this 14th day of July  
 1996 before me:



[Signature]  
 J.P.  
 A Justice of the Peace

SIGNED for and on behalf of THE  
 AUSTRALIAN COMPETITION AND  
 CONSUMER COMMISSION by ALLAN  
 HERBERT MILLER FELS, Chairman

SIGNED by GWENDA BERNICE EVANS

THE COMPANY SEAL of JALPALM PTY  
 LTD was hereunto affixed pursuant to a  
 resolution of the Directors in the  
 presence of \_\_\_\_\_ a  
 Director and \_\_\_\_\_  
 Secretary this \_\_\_\_\_ day of July  
 1996 before me:

.....  
 A Justice of the Peace

OK



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THE COMPANY SEAL of HAMILTON )  
 ISLAND LIMITED was hereunto affixed )  
 pursuant to a resolution of the Directors )  
 in the presence of )  
 a Director and )  
 Secretary this day of July )  
 1998 before me: )

.....  
 A Justice of the Peace

SIGNED for and on behalf of THE )  
 AUSTRALIAN COMPETITION AND )  
 CONSUMER COMMISSION by ALLAN )  
 HERBERT MILLER FELS, Chairman )

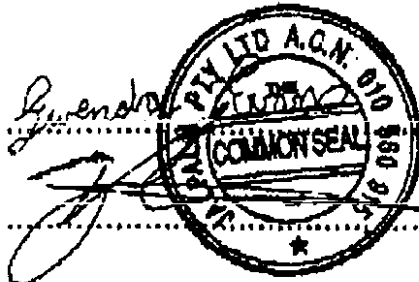
SIGNED by GWENDA BERNICE EVANS )

*Frankhurst* CDec 9077

THE COMPANY SEAL of JALPALM PTY )  
 LTD was hereunto affixed pursuant to a )  
 resolution of the Directors in the )  
 presence of KEITH ALBERT EVANS, )  
 Director and GWENDA BERNICE EVANS, )  
 Secretary this 10th day of July )  
 1998 before me: )

*Frankhurst* CDec 9077  
 .....  
 A Justice of the Peace

*Gwenda Evans*



STATEMENT TO BE READ AND PROVIDED TO THE COURT BY THE LAWYERS  
FOR THE ACCC, HIEL & HIL

1. The Australian Competition and Consumer Commission (the "Commission") has commenced Federal Court Proceedings, in Brisbane (Action No QG65 of 1996), including a representative action, on behalf of Gwenda Bernice Evans ("Gwen Evans") and her family company, Jalpalm Pty Ltd ("Jalpalm") against Hamilton Island Enterprises Limited ("HIEL") and Hamilton Island Limited ("HIL") arising out of conduct that occurred in 1994 at a time when Jalpalm held certain concessions on Hamilton Island.
2. The Commission asserts that the conduct of HIEL and HIL (set out in detail in the Statement of Claim) constitutes unconscionable conduct, and in certain respects, misleading conduct, in contravention of the *Trade Practices Act*, namely, Sections 51AA and 52 of the Act.
3. The Commission recognises that the conduct of concern to it occurred at a time prior to the appointment of the current Board of Directors of HIEL and HIL and its new management team.
4. The Commission further recognises that the new Board, Chairman and Chief Executive Officer, have caused extensive enquiries to be undertaken of the allegations and concerns raised by the Commission and both HIEL and HIL have sought to expeditiously and enthusiastically resolve these matters and provide Jalpalm and Gwen Evans with a substantial restitutionary payment entirely acceptable to the Commission, Gwen Evans and Jalpalm.
5. HIEL and HIL acknowledge that Gwen Evans and Jalpalm have suffered loss by reason of the conduct set out in the Statement of Claim and that prior management ought to have resolved these issues early, put Jalpalm and Gwen Evans in the position they would have been in had the conduct not occurred and moved to alleviate the stress and dislocation suffered by Gwen Evans, at the earliest possible opportunity. HIEL and HIL regret that this did not occur and accept that the conduct in 1994 may well amount to



unconscionable conduct and/or misleading conduct in contravention of the Act.

6. HIEL and HIL acknowledge that it is fundamentally important for all trading corporations and their staff to understand and properly comprehend all of the requirements of the *Trade Practices Act* and comply with the Act both in its spirit and its terms and, to that end, HIEL and HIL have given an undertaking to the Commission under Section 87B to, within 30 days of today, produce an outline of the elements of a Trade Practices training or compliance program for all management staff and set a date for the delivery of an awareness seminar or seminars and a timetable for the development of a Compliance Manual for all management staff to be delivered within 12 months.