



TRADE PRACTICES ACT 1974

UNDERTAKINGS TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B

BY

CLEAVERS TYRE SERVICE PTY LIMITED
ACN 001 450 095

BACKGROUND

Cleaver's Tyre Service Pty Limited ("Cleaver's Tyre Service") is incorporated in the State of New South Wales. Cleaver's Tyre Service is a retailer of tyres located in Taree, Wingham and Port Macquarie.

On 28 June 1995 an advertisement headed "Community Announcement" appeared in the Port Macquarie Express and on 29 June 1995 the same advertisement appeared in The Manning Great Lakes Extra. A copy of this advertisement is **Annexure 1** to this undertaking.

On 8 August 1995 two officers of the Commission interviewed Mr Ashley Cleaver, General Manager of Cleaver's Tyre Service. These officers informed Mr Cleaver that they believed that the advertisement may have indicated a breach of section 45 (in terms of section 45A) of the Trade Practices Act 1974 ("the Act") involving Cleaver's Tyre Service and other tyre resellers in the Taree, Wingham, Great Lakes and Port Macquarie areas. In particular the Commission was concerned that it evidenced an arrangement or understanding in relation to the tyre disposal rates to be charged by tyre resellers in the Taree, Wingham, Great Lakes and Port Macquarie areas. Mr Cleaver stated that he had placed and paid for the advertisement on behalf of Cleaver's Tyre Service. Mr Cleaver also stated that although no formal meeting had taken place with any of the other tyre resellers in the areas concerned he had discussed with his competitors the charging of tyre disposal fees and the placing of the advertisement, on behalf of all the tyre resellers, to inform both business and consumers that as from 1 July 1995 they would all be charging a fee for the disposal of unwanted tyres.

Cleaver's Tyre Service and Ashley Cleaver acknowledge and accept that such discussions may have breached section 45 of the Act.

UNDERTAKING

Cleaver's Tyre Service undertakes for the purposes of section 87B of the Act, 1974 that it will not hereafter, whether by itself, its employees or agents:

1. Make or attempt to make a contract or arrangement or arrive at or attempt to arrive at an understanding with any person carrying on business as a tyre reseller in or around the Taree, Wingham, Great Lakes or Port Macquarie areas that has the purpose or effect or is likely to have the effect of fixing, controlling or maintaining the price to be charged by the parties to the arrangement or understanding for the disposal of tyres.
2. Aid, abet, counsel or procure any person to make or attempt to make a contract or arrangement with or arrive at or attempt to arrive at an understanding with any person carrying on business as a tyre reseller in or around the Taree, Wingham, Great Lakes or Port Macquarie areas that has the purpose or effect or is likely to have the effect of fixing, controlling or maintaining the price to be charged by the parties to the arrangement or understanding for the disposal of tyres.
3. Induce or attempt to induce, any person, whether by threats or promises or otherwise, to make or attempt to make a contract or arrangement or arrive at or attempt to arrive at an understanding with any person carrying on business as a tyre reseller in or around the Taree, Wingham, Great Lakes or Port Macquarie areas that has the purpose or effect or is likely to have the effect of fixing, controlling or maintaining the price to be charged by the parties to the arrangement or understanding for the disposal of tyres..
4. That within 30 days of the date of this undertaking Cleaver's Tyre Service send a letter in the form of **Annexure 2** to all other tyre resellers in the Taree, Wingham and Port Macquarie areas and supply the Commission with a copy of the letter and a list of names and addresses of all tyre resellers to whom it was sent.
5. That within 10 days of the date of this undertaking Cleaver's Tyre Service place a corrective advertisement in the Port Macquarie Express and The Manning Great Lakes Extra in the form of **Annexure 3**.

6. Cleaver's Tyre Service will within 3 months of the date of this undertaking put in place a compliance program with the following characteristics:

(a) Aim

to create a culture of compliance within Cleaver's Tyre Service and to prevent, so far as is reasonably possible, any contraventions of the Act by the Group or by its directors, employees or agents.

(b) Policy

the formal adoption, or reaffirmation, by Cleaver's Tyre Service, of a policy of strict compliance with both the letter and spirit of the Act within Cleaver's Tyre Service and 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 Act.

(c) Compliance Infrastructure

The appointment of an appropriately qualified senior executive as the Compliance Officer with overall responsibility for Trade Practices compliance.

(d) Coverage

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

(e) Education

Development and implementation of 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 potential Trade Practices problems for referral to the appropriate person in Cleaver's Tyre Service compliance infrastructure;
- (ii) persons with responsibilities within Cleaver's Tyre Service compliance infrastructure can effectively carry out those responsibilities; and
- (iii) the Cleaver's Tyre Service 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 Cleaver's Tyre Service legal advisers.

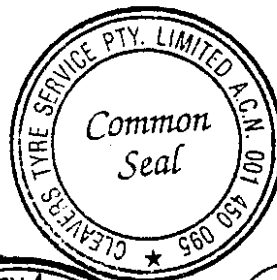
ACKNOWLEDGMENTS

Cleaver's Tyre Service acknowledges and accepts that this undertaking will be placed on the TPC's public register and agrees that the TPC may otherwise publish and refer to this document at its discretion.

Cleaver's Tyre Service also notes that this undertaking in no way derogates from the rights or remedies available to any other person arising from the alleged conduct.

THE COMMON SEAL of CLEAVER'S TYRE SERVICE PTY LIMITED

ACN 001 450 095 is affixed in
accordance with its articles of
association in the presence of:



Director

Secretary

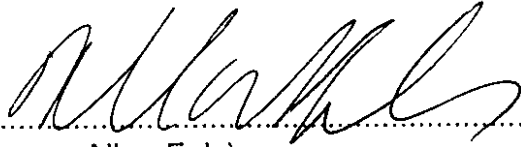
this

14th

day of

Nov.

1995



(Professor Allan Fels)
Chairman

this



day of



1995