

# Deed



Date: 5 October 1994

Legal & General Life Of Australia Limited (A.C.N. 000 029 818)

The Trade Practices Commission

DEED made at *CANBERRA* on *5* October, 1994

**BETWEEN**            **LEGAL & GENERAL LIFE OF AUSTRALIA LIMITED (A.C.N. 000 029 818)** of 504 Pacific Highway, St Leonards in the State of New South ("Legal & General") of the First Part

**AND**                    **THE TRADE PRACTICES COMMISSION** of Benjamin Offices, Chan Street, Belconnen in the Australian Capital Territory ("**TPC**") of the Other Part

**WHEREAS**

- A.        Legal & General carries on business throughout Australia as a provider of a wide range of life insurance products including products known as Umbrella Financial Plans.
- B.        Such products are sold primarily on behalf of Legal & General by agents who are insurance intermediaries within the meaning given to that term in the Insurance (Agents & Brokers) Act 1984.
- C.        On 27 February 1992 Legal & General appointed a company known as The IMB Group Pty Limited (now in liquidation) ("**IMB**") as an agent and shortly thereafter appointed as agents a number of persons associated with IMB (the "**IMB Agents**").
- D.        Between 27 February 1992 and 20 September 1993 IMB and the IMB Agents sold approximately 2,800 Legal & General Umbrella Financial Plans at or immediately after or otherwise in association with seminars conducted by the IMB Agents or persons associated with IMB to promote a club known as The Logan Lions Football Club and a company known as Logan Lions Limited.

- E. On 28 July 1993 the TPC expressed its concern to Legal & General regarding certain conduct of IMB and the IMB Agents in selling Umbrella Financial Plans and on 17 September 1993 advised Legal & General that it considered that such conduct contravened the Trade Practices Act (1974) (the "Act"). In a letter to the solicitors for Legal & General dated 21 September 1993 the TPC confirmed that given the seriousness of the matters alleged in relation to Legal & General, IMB and the IMB Agents "the Commission will be taking whatever action it believes necessary to ensure appropriate injunctions are obtained to prevent further conduct which would breach the Trade Practices Act and, in the light of the immediate response by Legal & General and IMB, to consider the institution of penalty proceedings in respect of either or both of the companies". The TPC confirmed its view that "the marketing of the Legal & General product involved a number of serious misrepresentations by (the IMB Agents) who were also office holders of IMB, concerning the proposals to establish the Logan Lions Football Team and the related property developments, and, in particular, the representations which were made as part of the sale of Legal & General products that the purchase of these products was a necessary precondition to an entitlement to purchase shares in Logan Lions Limited".
- F. In the same letter the TPC also notified Legal & General of certain remedial steps which the TPC considered essential to be taken immediately.
- G. In anticipation of one of those steps Legal & General had on 20 September 1993 instructed IMB that "you and all other employees and agents of the IMB Group Limited (IMB) are to cease immediately selling any Legal & General life policies at or immediately after the seminars you have been holding to promote the Logan Lions Football Club" and on or about 6 October 1993 Legal & General procured the termination of the agency appointments of IMB and the IMB agents.
- H. Legal & General immediately agreed to implement the other essential steps notified by the TPC on 21 September 1993 and the TPC acknowledges that Legal & General has done so expeditiously and substantially in compliance with the requirements of the TPC as so notified.

- I. As a consequence all persons who purchased Umbrella Financial Plans from IMB and the IMB Agents were offered the options of retaining their Plans, transferring their Plans to another Legal & General investment plan without penalty or cancelling their Plans without penalty with the result that all persons who have to date requested the cancellation of their Plans whether before or after 21 September 1993 have received from Legal & General all moneys subscribed by them by way of premium to their Umbrella Financial Plans together with interest thereon. As at the date of this deed Legal & General offers the same options to the persons who purchased such Plans but who have not yet responded to Legal & General's offer and will continue to do so for as long as is reasonably practicable.
- J. In the result no person who purchased an Umbrella Financial Plan through IMB or the IMB Agents has suffered or will suffer loss, whereas to date the cost to Legal & General of implementing the steps required by the TPC is in excess of \$1 million and will increase, following further cancellations of Umbrella Financial Plans by the remaining persons as requests therefor are met by Legal & General.
- K. On or about 29 October 1993 the TPC commenced proceedings in the General Division in the Queensland District Registry of the Federal Court of Australia against IMB, the IMB Agents and certain other persons (collectively called the IMB Respondents) and Legal & General ("**the Proceedings**"). In its Statement of Claim the TPC alleged that certain contraventions of the Trade Practices Act had taken place, that Legal & General was involved in the said contraventions within the meaning ascribed thereto in paragraphs 75B(1)(a) and (c) of the Act and as a consequence the TPC has sought certain injunctions and penalties.
- L. The TPC has now agreed to discontinue the Proceedings against Legal & General upon the undertakings by Legal & General and otherwise upon the conditions set out in this Deed.

**NOW THIS DEED WITNESSES AS FOLLOWS:-****1. ACKNOWLEDGEMENTS**

Legal & General acknowledges that if the conduct alleged by the TPC in the Proceedings is found by the Court to have taken place, serious contraventions of the Act will have taken place and the TPC acknowledges that Legal & General has given undertakings to the Court that if such findings are made it will, to the extent that it has not already done so, do or cause to be done all those things in respect of which in its Application to the Court in connection with the Proceedings the TPC has sought injunctions.

**2. L & G COMPLIANCE PROGRAM**

The TPC further acknowledges that Legal & General has acted promptly to comply with its requirements as notified to Legal & General through its solicitors on 21 September 1993 and that it continues to do so in the interests of ensuring that no person who purchased an Umbrella Financial Plan through the agency of IMB and the IMB Agents suffers or will suffer loss and that Legal & General has introduced and is implementing a program for compliance with the Act by its directors, officers and employees and agents.

**3. DISCONTINUANCE OF PROCEEDINGS**

Forthwith upon the execution of this Deed the TPC undertakes to seek the leave of the Court to discontinue the Proceedings against Legal & General pursuant to Order 22 Rule 2(1)(d) of the Rules of the Court. In the event that leave is so granted Legal & General will consent to an order that it pay the costs of the TPC of so much of the Proceedings as relate to the claims against Legal & General and the TPC will forthwith file and serve an appropriate notice of discontinuance. In the event that leave is not so granted, the obligations of the parties under this Deed will lapse and the parties released therefrom.

4. **FURTHER PROCEEDINGS**

The TPC further undertakes that in consideration of and subject to the performance by Legal & General of the undertaking contained in clause 5 of this Deed it will not institute any further or other legal proceedings against Legal & General its directors, officers or employees or any of them in respect of any contravention of the Act alleged in the said Statement of Claim, any conduct alleged therein, any conduct similar thereto or in respect of or arising out of any fact or matter of which the TPC has notice as at the date of this Deed.

5. **INDUSTRY COMPLIANCE**

Legal & General acknowledges that whether or not the conduct alleged by the TPC in the Proceedings is found to have taken place, it is in the interests of the Australian community and of consumers within that community that all corporations carrying on the business of life insurance in Australia, the directors officers and employees of those corporations, the agents of those corporations and employees of those agents engaged in the selling of life insurance proceedings are made aware of and comply with the obligations imposed upon them and each of them by the Act and that all consumers of life insurance products have disclosed to them sufficient information so that they may make informed decisions prior to purchasing a life insurance product and so that they not be at risk of being misled or deceived about the conditions attaching to, the benefits to be provided by, and the obligations to be undertaken by them and by their insurers in respect of life insurance products. In consideration of and subject to the discontinuance of the Proceedings against Legal & General by and the undertaking of the TPC contained in clause 4 hereof Legal & General undertakes that:-

- (a) it will prepare or cause to be prepared a national program complying in its content and implementation with the criteria set out in the Schedule hereto

for the training of the directors officers and other employees of life insurance corporations carrying on business in Australia the agents of those corporations and employees of those agents engaged in the selling of life insurance products as to the provisions of the Act, being a program designed to promote compliance with such provisions (the "**Compliance Program**");

- (b) it will consult with the TPC during the preparation of the Compliance Program and comply with the reasonable requests of the TPC as to the form and context thereof and on completion of the Compliance Program will submit it to the TPC for approval;
- (c) upon the TPC approving the Compliance Program, it will make available to and use its best endeavours to encourage all life insurance corporations carrying on business in Australia to adopt and implement the Compliance Program for their directors officers and employees, their agents and employees of those agents engaged in the selling of life insurance products; and
- (d) it will otherwise promote the adoption and implementation of the Compliance Program and the desirability of complying with the provisions of the Act to such corporations, their directors officers employees and agents, and the employees of such agents.

#### 6.1 **CONTENTS OF COMPLIANCE PROGRAM**

The Compliance Program will comprise a video focussing directly upon the life insurance industry and those particular provisions of the Act likely to be associated with or relevant to the sale of life insurance products, a booklet summarising those provisions and illustrating conduct which must not be undertaken in connection therewith (and a computer disc containing the text of the booklet, in a format reasonably selected by Legal & General), instructions as to the use of the Program and

an outline of a training program. The booklet and video will be suitable for use by any life company and not tailored only to products of Legal & General.

## 6.2 COSTS OF PROGRAM

Legal & General will meet the costs of the production of the Compliance Program, as well as the costs agreed by Legal & General to have been reasonably and properly incurred by the TPC in consulting with Legal & General in the development and promotion of the Compliance Program provided always that such costs in aggregate do not exceed the sum of \$200,000, exclusive of the costs relating to the time spent by any director, officer or employee of Legal & General involved in such development and promotion.

## 7. STEERING COMMITTEE

To supervise and coordinate the production of the Compliance Program and the orderly promotion thereof to life insurance corporations within Australia as hereinbefore contemplated, there will be formed immediately following execution of this Deed and the discontinuance of the Proceedings against Legal & General a Steering Committee which will comprise not more than three nominees of the TPC and not more than three nominees of Legal & General (being up to two senior executive officers of Legal & General and a principal of its solicitors). The Steering Committee shall meet on such occasions and in such places as may be agreed between the TPC and Legal & General and as a priority shall establish a program and schedule for the development and completion of the Compliance Program, with the intention that the Program will be ready for distribution and implementation by 31 December 1994.

## 8. COMPLETION OF OBLIGATIONS

Legal & General shall be deemed to have complied with its obligations under this Deed upon the completion of the production of the Compliance Program and the distribution thereof to all life insurance corporations carrying on business in Australia



and upon the TPC being satisfied that Legal & General has used its best endeavours to encourage all such corporations to adopt and implement the Compliance Program in accordance with and for the purpose of achieving the objectives set out in clause 5 hereof and in clause 1 of the Schedule hereto, and Legal & General undertakes that it will do all such things as might reasonably be necessary to achieve those objectives.

## SCHEDULE

### 1. OBJECTIVE

The objective of the Legal & General/TPC Life Insurance Industry Compliance Program is to impart to all directors officers and employees of corporations carrying on business in the life insurance industry in Australia; to agents of such corporations and to employees of those agents, engaged in the selling of life insurance products, a sufficient understanding of the Trade Practices Act ("Act") and of its provisions, applied in the context of other proposed regulations and codes for the life insurance industry, to enable them to:-

- (a) avoid any contravention of the Act;
- (b) understand clearly what is expected of them and those under their control to comply with the provisions of the Act;
- (c) recognise the possibility of contraventions of the Act before they occur and take appropriate action to avoid such contraventions occurring;
- (d) appreciate both the corporate consequences and personal liabilities of contravention of the provisions of the Act; and
- (e) comply with the provisions of such other proposed regulations and codes.

### 2. CONTENT AND SCOPE OF THE COMPLIANCE PROGRAM

#### 2.1 Trade Practices Act

To develop an appreciation and understanding of the Act generally, and with particular attention to the provisions covering:

- (a) Product Forcing (Section 47(6) of the Act)
- (b) Unconscionable Conduct (Part IVA of the Act) and how products should be sold to specially disadvantaged groups within the community;
- (c) Misleading and Deceptive Conduct (Section 52 of the Act) and the need to provide clients with sufficient information to enable them to make an informed choice;
- (d) False or misleading representations or conduct (Section 53 and Section 55A of the Act) and, particularly, representations that a product is of a certain standard or quality; that a product or service has the sponsorship, approval or performance characteristics claimed during the sale process; that the client has the need for that product or service; that reasonable grounds exist for future predictions (s.51A) and that a product is suitable for the client's purposes (s.55A).

## 2.2 ISC Requirements

To ensure familiarity with the content and scope of proposed Insurance and Superannuation (ISC) Circular 304 (and any possible replacements) and, in particular:

- (a) Ensuring that clients are informed about key features of the products being promoted, such as cooling off periods, fees and charges, surrender values at different times and possible additional costs if one product is replaced with another;
- (b) Providing readily understandable descriptions of common terms such as "capital guaranteed", "projected future interest", "declared interest", "sum insured", such that the average client can form an appreciation of the product that is being promoted; and

- (c) ensuring familiarity with the content and scope of the proposed ISC Circular 305 (and any possible replacement).

### 2.3 **ISC Code**

To ensure familiarity with the content and objectives of the proposed ISC Code of Practice for Sales Practices and Customer Complaint Handling in the life insurance industry, with particular emphasis on:

- (a) The "Know Your Client" Rule, by providing the client with a needs analysis of their financial position during the sale process;
- (b) the need to have a reasonable basis for making a recommendation and the obligations on the company in this regard; and
- (c) The current information as to the availability and scope of complaints resolution procedures for clients, both within the life office and externally.

## 3. **IMPLEMENTATION OF THE COMPLIANCE PROGRAM**

### 3.1 **The Life Industry**

Legal & General will promote the Compliance Program to all registered life offices by:

- (a) Seeking the support of both the TPC and the Insurance and Superannuation Commission to the Compliance Program and publicising this support;
- (b) Seeking the recommendation of LIFA that all its members adopt the Compliance Program;

- (c) Providing LIFA and all life offices who request it (and without charge) with a copy of all the material comprising the Compliance Program including one copy of the training video and one copy of all written material such as work books and brochures; and
- (d) Providing staff to answer questions raised by other life offices as to the content of the Compliance Program material and as to its implementation.

### 3.2 Within Legal & General

Legal and General is to provide six monthly auditing and monitoring reports to the TPC on its compliance procedures. The first of these reports will be due for the period ending 31 December 1994. Subsequent reports will be for the periods ending 30 June 1995, 31 December 1995, 30 June 1996 and 31 December 1996. The reports will be forwarded within one month of the date of the end of the reporting period and detail:

- the numbers and categories of staff and management trained with the TPA compliance program;
- the numbers and categories of staff and management not yet trained with the TPA compliance program;
- the compliance and monitoring systems established by Legal and General; and
- a description of the effectiveness of the program.

### 3.3 Timing

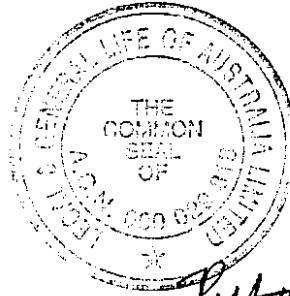
- the written materials for compliance with the Act and the computer disc version, are to be completed by 31 December 1994 (or such later date as

the TPC may reasonably agree) and distributed within one month of the date of completion. The covering letter will indicate those parts of the package still to be sent and their anticipated date of distribution;

- materials based upon the Life Insurance Code and circulars 304 and 305, are to be finalised within three months of the finalisation of each of these documents and distributed within one month of being finalised. The disc version of those modules need only be completed and distributed when all of these modules have been completed; and
- the video is to be completed within the first quarter of 1995 (or such later date at the TPC may reasonably agree) and distributed within one month of being completed.
- the TPC shall assist Legal and General to meet the target date in this clause 3.3, and shall agree to any reasonable extensions due to delays in TPC review or approval of compliance materials or the video.

IN WITNESS WHEREOF the parties hereto have executed this deed on the date first hereinbefore written

THE COMMON SEAL of )  
LEGAL & GENERAL LIFE OF )  
AUSTRALIA LIMITED was affixed by the )  
authority of the Board of Directors in the )  
presence of:



*D Bullen*  
.....  
(Signature of Secretary/Director)

*T Matthews*  
.....  
(Signature of Director)

*DEREK BULLEN*  
.....  
(Name of Secretary/Director in Full)

*TREVOR JOHN MATTHEWS*  
.....  
(Name of Director in Full)

THE COMMON SEAL of )  
THE TRADE PRACTICES COMMISSION )  
was hereunto affixed in the presence of: )



*A Thomas*  
.....  
(Signature of Secretary)

*A F Fels*  
.....  
(Signature of Chairman)

*Philip Wesley Thomas*  
.....  
(Name of Secretary in Full)

*ALLAN FELS*  
.....  
(Professor A Fels)