

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B OF THE TRADE
PRACTICES ACT 1974 BY PHILIP MORRIS**

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GLOSSARY

In this Undertaking, unless the contrary intention appears, the following definitions apply:

“Act” means the *Trade Practices Act 1974*.

“Brand Names” includes but is not restricted to trade mark brand names of Cigarettes and includes any words forming part of such Brand Name or trademark.

“Cigarette” means a tobacco product intended for smoking.

“Commission” means the Australian Competition and Consumer Commission.

“Descriptors” means the use of any of the following words and numbers either alone or in combination with each other in a Brand Name or on Cigarette packaging:

- a. "Light"; "Low"; "Medium"; "Mild"; "Ultra Mild"; "Extra Mild"; "Super Mild"; "Special Mild"; "Super Lights"; "Micro"; "Micro Mild"; "Ultra Lights"; "Extra Lights"; and
- b. numbers (including numerals or words) which refer to average levels of machine tested Tar, nicotine, and/or carbon monoxide emitted from Cigarettes.

"High Yield Cigarettes" means Cigarettes that are not Low Yield Cigarettes.

"Inserts" means any paper or other material on which Descriptors or a representation could be published or otherwise displayed.

"Low Yield Cigarettes" means Cigarettes that:

- a. have a machine tested average tar delivery of 8mg or less; or
- b. have a machine tested average tar delivery in excess of 8mg and which bear the Descriptors or any one of them.

"PMAL" means Philip Morris (Australia) Limited (ACN 004 316 901).

"PML" means Philip Morris Limited (ACN 004 694 428).

"Philip Morris" means PMAL and PML.

"Related Body Corporate" means, in relation to a body corporate, any other body corporate which would be deemed to be related to it by the operation of section 4A(5) of the Act.

"Smoker's Compensation" means the behaviour of smoking Cigarettes in a way that results in a smoker inhaling higher levels of Tar, nicotine and/or carbon monoxide than indicated by Yield Information. Such behaviour may include inhaling more deeply, inhaling more frequently, smoking more often and occluding the perforations in a Cigarette.

"Tar" means the raw anhydrous nicotine-free condensate of smoke.

"Yield Information" means numbers and words, other than when used in a Brand Name, recording or referring to the average levels of machine tested Tar, nicotine or carbon monoxide produced by a Cigarette.

The singular includes the plural and vice versa.

Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

BACKGROUND

1. This Undertaking is given to the Commission by Philip Morris pursuant to section 87B of the Act without any admission of liability.
2. PML is a wholly owned subsidiary of PMAL. PML is engaged in trade or commerce in Australia as a manufacturer and importer of Cigarettes supplied in Australia, New Zealand and the Pacific region.
3. Since at least the early 1990s, PML has manufactured, imported and marketed various Low Yield Cigarettes which have been sold in Australia. Annexure "A" to this Undertaking is a schedule identifying the Brand Names of the Low Yield Cigarettes manufactured, imported and marketed by PML in Australia.
4. Since at least 2001, the Commission has been investigating allegations that, among other things, Philip Morris has, in trade or commerce, made representations about Low Yield Cigarettes in contravention of the Act (the ***Commission's Investigation***).
5. The Commission has concluded the Commission's Investigation and is satisfied by reason of the Commission's Investigation that:
 - 5.1. since at least the early 1990's, Smoker's Compensation and its effects have been known; and
 - 5.2. in marketing, advertising and selling Low Yield Cigarettes in Australia, Philip Morris, in trade or commerce, through means including advertising, promotion and the use of Descriptors and/or Yield Information, has made one or more of the following representations, that Low Yield Cigarettes:
 - a. are less harmful to the health of a smoker compared to High Yield Cigarettes;
 - b. reduce the risk of smoking-related diseases including lung cancer, cardiovascular diseases and emphysema compared to High Yield Cigarettes;

- c. reduce the risk of exacerbating asthma and respiratory diseases compared to High Yield Cigarettes;
- d. will assist a smoker quit smoking Cigarettes;
- e. will assist a smoker in reducing the number of Cigarettes consumed;
- f. are a safer alternative to High Yield Cigarettes; and/or
- g. are less addictive than High Yield Cigarettes,

(collectively the Representations); and

5.3. one or more of the Representations have been made without adequate qualification or condition including the effect of Smoker's Compensation.

6. For the avoidance of any doubt, Philip Morris denies that in marketing, advertising and selling Low Yield Cigarettes in Australia, through means including advertising, promotion and the use of Descriptors and/or Yield Information, it has made any or all of the Representations.
7. The evidence gathered by the Commission in the course of the Commission's Investigation has led the Commission to form the view that Low Yield Cigarettes:
 - a. are not necessarily less harmful to the health of the smoker compared to High Yield Cigarettes;
 - b. do not necessarily reduce the risk of smoking related diseases including lung cancer, cardio vascular diseases and emphysema compared to High Yield Cigarettes;
 - c. do not necessarily reduce the risk of exacerbating asthma and respiratory diseases compared to High Yield Cigarettes;
 - d. do not necessarily assist a smoker quit smoking Cigarettes;
 - e. do not necessarily assist a smoker in reducing the number of Cigarettes consumed;
 - f. are not necessarily a safer alternative to High Yield Cigarettes; and/or
 - g. are not necessarily less addictive than High Yield Cigarettes.

8. The Commission considers that by making one or more of the Representations Philip Morris has:
 - a. engaged in conduct that is misleading or deceptive or likely to mislead or deceive in contravention of section 52 of the Act;
 - b. falsely represented that Low Yield Cigarettes are of a particular standard, quality, value, grade, composition, style or model, in contravention of section 53(a) of the Act;
 - c. represented that the Low Yield Cigarettes have performance characteristics or benefits which they do not have, in contravention of section 53(c) of the Act; and/or
 - d. engaged in conduct that is liable to mislead the public in contravention of section 55 of the Act.
9. For the avoidance of any doubt, Philip Morris denies that in marketing, advertising and selling Low Yield Cigarettes in Australia, through means including advertising, promotion and the use of Descriptors and/or Yield Information, it has made one or more of the Representations or engaged in any conduct in contravention of the relevant provisions of Part V or any other provision of the Act, or has otherwise engaged in false, misleading or deceptive conduct, in the manner concluded by the Commission or otherwise.
10. Without derogating from clauses 6 and 9 above, in order to resolve the Commission's Investigation, without any admission of liability, Philip Morris has offered to give this Undertaking to the Commission pursuant to section 87B of the Act.
11. The Commission is satisfied that this Undertaking addresses, without the need for litigation, the conduct the subject of the Commission's Investigation in that this Undertaking:
 - a. stops the making of the Representations;
 - b. establishes an obligation on Philip Morris to fund the publication of advertisements addressing the Commission's concerns about the Representations;

- c. establishes an obligation on Philip Morris to contribute financially to the ongoing education of consumers in relation to the health risks posed by smoking Cigarettes;
- d. ensures that the Representations are not made again; and
- e. brings the Commission's Investigation to an end,

and the Commission has advised Philip Morris that subject to the provision and the implementation of the undertakings contained in this Undertaking, it will not commence any proceedings against Philip Morris in respect of the conduct the subject of the Commission's Investigation, including the use of Descriptors or Yield Information.

- 12. The Commission acknowledges that Philip Morris has co-operated with the Commission throughout the Commission's Investigation and in bringing it to an end.

COMMENCEMENT OF UNDERTAKINGS

- 13. This Undertaking comes into effect when:
 - a. the Undertaking is executed by Philip Morris; and
 - b. the Commission accepts the Undertaking so executed by Philip Morris.

APPLICATION

- 14. This Undertaking extends to the marketing, advertising and sale of Low Yield Cigarettes by Philip Morris in Australia.

UNDERTAKINGS

Philip Morris will not make the Representations

- 15. Philip Morris undertakes that, subject to the operation of clauses 17, 18, 19, 21 and 22 of this Undertaking, it will, whether by itself, its directors, servants, agents or otherwise howsoever, not make, or cause to be made, the Representations:
 - a. on the packaging of its Cigarettes (including Inserts) and/or on its Cigarettes manufactured or imported for supply in Australia; and

- b. on material intended to be disseminated to members of the general public in Australia in relation to the marketing, advertising or sale of Cigarettes.

Philip Morris will cease using Descriptors

- 16. Subject to clause 19, in May 2005, Philip Morris will commence manufacturing or importing Cigarettes in packaging (including Inserts) and Cigarettes which do not use, publish or display the Descriptors. Subject to clause 19, Philip Morris will use its best endeavours to ensure that by 31 May 2005, 60% of the volume of the Cigarettes it imports or manufactures is in packaging (including Inserts and the Cigarettes themselves) which does not use, publish or display the Descriptors.
- 17. Subject to clauses 18, 19, 21 and 22, Philip Morris undertakes that from no later than 31 July 2005, it will, whether by itself, its directors, servants, agents or otherwise howsoever, cease using, publishing or displaying, or causing to be used, published or displayed, the Descriptors:
 - a. on the packaging of its Cigarettes (including Inserts) and/or on its Cigarettes manufactured or imported for supply in Australia; and
 - b. on material intended to be disseminated to members of the general public in Australia in relation to the marketing, advertising or sale of Cigarettes.
- 18. Philip Morris may, for a period of six (6) months from the date of this Undertaking, provide information to:
 - a. persons involved in the manufacture, packaging, distribution or sale of Cigarettes; or
 - b. members of the public who contact the Company,

which explains the changes to Cigarette packaging arising out of the obligations in this Undertaking.

Philip Morris will cease using Yield Information

- 19. Subject to clauses 21 and 22, Philip Morris undertakes that from no later than 1 March 2006 it will, whether by itself, its directors, servants, agents or otherwise

howsoever, cease using, publishing or displaying, or causing to be used, published or displayed, Yield Information:

- a. on the packaging of its Cigarettes (including Inserts) and/or on its Cigarettes manufactured or imported for supply in Australia; and
- b. on material intended to be disseminated to members of the general public in Australia in relation to the marketing, advertising or sale of Cigarettes.

Funding contribution to education programmes

- 20. Philip Morris will, within 21 days of this Undertaking coming into effect, pay to the Commission the amount of four million dollars (\$4,000,000) with the intention that the Commission will, without limitation, direct these funds:
 - a. to an advertising campaign designed, without limitation, to include information that will draw to the attention of consumers that Low Yield cigarettes are not necessarily less harmful to consumers than High Yield cigarettes; and
 - b. to programmes related to the health issues associated with Cigarette use.

Internal Communications

- 21. For the avoidance of doubt, clauses 15, 17 and 19 do not extend to communications within Philip Morris or between Philip Morris and its Related Bodies Corporate.

Sale of Existing Stock

- 22. Nothing in this Undertaking shall prevent Philip Morris or any other person from:
 - a. supplying Cigarettes bearing Descriptors either on the Cigarettes or on the packaging (including Inserts) of the Cigarettes after 31 July 2005, provided the Cigarettes and/or packaging were manufactured or imported in the ordinary course by Philip Morris before 31 July 2005; or
 - b. supplying Cigarettes bearing Yield Information either on the Cigarettes or on the packaging (including Inserts) of the Cigarettes after 1 March 2006, provided the Cigarettes and/or packaging were manufactured or imported in the ordinary course by Philip Morris before 1 March 2006.

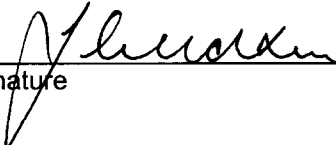
Variation of Undertaking

23. If Philip Morris is unable to comply with its obligations under this Undertaking, or believes some modification is justified due to changed circumstances, Philip Morris and the Commission will review this Undertaking and negotiate in good faith the withdrawal or variation of all or a part of this Undertaking pursuant to section 87B(2) of the Act.
24. The Commission acknowledges that a variation of this Undertaking may be justified in the future to take account of further research or technological progress. In particular, the Commission will review and negotiate in good faith the withdrawal or variation of this Undertaking if presented with sufficient competent and reliable scientific evidence, government-approved or third party-endorsed, to substantiate a Representation about a Cigarette.

ACKNOWLEDGEMENTS

25. Philip Morris acknowledges that the Commission will make this Undertaking available for public inspection.
26. Philip Morris further acknowledges that the Commission will, at its absolute discretion, from time to time, publish and publicly refer to this Undertaking.
27. Philip Morris further acknowledges and accepts that this Undertaking in no way derogates from the rights and remedies that may be available to any other person arising from the conduct of Philip Morris referred to in this Undertaking.

EXECUTED by Philip Morris (Australia))
Limited (ACN 004 316 901) by its authorised)
officers pursuant to section 127(1) of the)
Corporations Act 2001:



Signature

John Greenhill

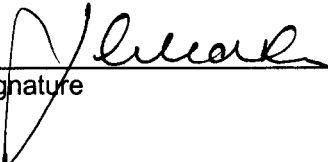
Print name

MANAGING DIRECTOR

Office held

This 5TH day of MAY 2005

EXECUTED by Philip Morris Limited)
(ACN 004 694 428) by its authorised officers)
pursuant to section 127(1) of the Corporations)
Act 2001:



Signature

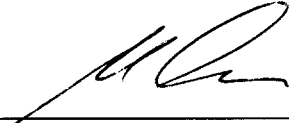
J. GREENHILL

Print name

MANAGING DIRECTOR

Office held

This 5TH day of MAY 2005



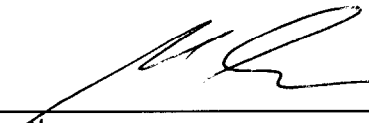
Signature

Michael Szlachetka

Print name

Director Finance

Office held



Signature

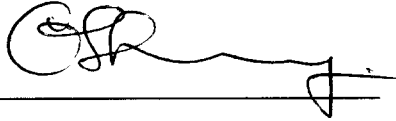
Michael Szlachetka

Print name

Director Finance

Office held

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

A handwritten signature in black ink, appearing to read 'GJS', written over a horizontal line.

Graeme Julian Samuel
Chairperson

This 10th day of May 2005

ANNEXURE A

PHILIP MORRIS

Current Brands

Brand Name
Alpine Lights
Alpine Extra Lights
Alpine Ultra Lights
Alpine One
Longbeach Mild
Longbeach Super Mild
Longbeach Special Mild
Longbeach Ultra Mild
Longbeach Menthol 2MG*
Longbeach 1MG*
Marlboro Lights
Marlboro Medium
Marlboro Mild Flavor
Marlboro Lights 100s
Marlboro Lights Menthol
Peter Jackson Extra Mild
Peter Jackson Super Mild
Peter Jackson Special Mild
Peter Jackson Ultra Mild

Peter Jackson One
Superlights
Superlights Ultra