



TRADE PRACTICES ACT 1974
VARIATION TO UNDERTAKING
TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
GIVEN UNDER SECTION 87B

BY RAMSAY HEALTH CARE LIMITED (ACN 001 288 768)

Background

On 13 April 2005 Ramsay Health Care Limited (ACN 001 288 768) (**Ramsay**) offered an undertaking to the Australian Competition and Consumer Commission (**Commission**) which was accepted by the Commission on that date (**Undertaking**).

The purposes of the Undertaking included:

- (a) providing for the Affinity Business to be held separate from the existing Ramsay business until the Commission had had an opportunity to consider the competition ramifications of the acquisition of the Affinity Business by Ramsay; and
- (b) preserving the Affinity Business as an ongoing concern in good condition so as to ensure that all or any part of it could be divested by Ramsay to address the Commission's competition concerns.

The Commission has now had an opportunity to consider the competition ramifications of the Affinity Acquisition and has announced its decision.

Ramsay wishes to vary the Undertaking to provide that:

- (a) Ramsay will continue to hold the New Affinity hospitals and the other Affinity hospitals to be divested by Ramsay separate from the rest of the Ramsay business; and
- (b) the balance of the Affinity Business will be released from the hold separate obligations.

Both Ramsay and the Commission also wish to confirm that Ramsay will divest the New Affinity hospitals, even if those hospitals are not divested to New Affinity.

Accordingly, Ramsay offers the Commission this Variation in accordance with section 87B of the *Trade Practices Act*.

Variation to the Undertaking

1. The following definition of "Divestiture Business" is deleted from the Undertaking:

"Divestiture Businesses" means those private hospitals within the existing business of Ramsay and the existing business of Affinity which are identified in this Undertaking or by the Commission pursuant to this Undertaking as being necessary to divest"

and the following definition is inserted in its place:

“Divestiture Businesses” means:

- (a) *the New Affinity Hospitals;*
- (b) *the hospitals to be divested pursuant to clause 7.1(b); and*
- (c) *the Affinity hospitals listed in Annexure E,*

and includes, in relation to each hospital, all the assets which contribute to the earnings profile of that hospital.

2. The following definition of "Hold Separate Hospitals" is inserted in the Undertaking:

“Hold Separate Hospitals” means the New Affinity Hospitals and the hospitals listed in Annexure E,

3. The following definition of "Hold Separate Hospitals Business" is inserted:

“Hold Separate Hospitals businesses” means the businesses operated at each of the Hold Separate Hospitals, as carried on by Affinity immediately prior to 13 April 2005.

4. The following definition of “Hold Separate Termination Date” is deleted from the Undertaking:

“Hold Separate Termination Date” means the date on which the Commission advises Ramsay in writing that it does not have any competition concerns in respect of the Proposed Acquisition.

and the following definition inserted in its place:

“Hold Separate Termination Date” means, in relation to the Divestiture Businesses or a part of them, the date on which the Commission advises Ramsay in writing that the Commission is satisfied with the divestment of the Divestiture Businesses or the relevant parts of them.

5. The following definition of “Senior Management” is deleted from the Undertaking:

“Senior Management” means the management team and senior personnel of the Affinity Business.

and the following definition inserted in its place:

“Senior Management” means the management team and senior personnel, either existing or appointed, of the Hold Separate Hospitals.

6. Clause 6.1 is amended by deleting the words “*the Affinity Business*” and inserting the words “*the Hold Separate Hospitals' Businesses*” in their place and by deleting the words “that business” wherever appearing and inserting the words “those businesses”.

7. Clause 6.2(a) is amended to read as follows:

"(a) take all steps necessary to preserve the Hold Separate Hospitals' Businesses as separate and independently viable going concerns in the provision of private hospital services (or any other service provided by the Hold Separate Hospitals' Businesses from time to time)"

8. Clauses 6.2(b), (c) and (e) are amended by deleting the words "Affinity Business" wherever appearing and inserting the words "Hold Separate Hospitals' Businesses".

9. Clause 6.2(d) is amended by deleting the words "Affinity Business" wherever appearing and inserting the words "Hold Separate Hospitals' Businesses" and by deleting the words "that business" and inserting the words "those businesses".

10. Clause 6.2(f) is amended to read as follows:

"(f) Provide and maintain:

- (i) access to sufficient working capital and sources of credit for the Hold Separate Hospitals' Businesses; and*
- (ii) current levels of promotional, advertising, sales and technical assistance, marketing and merchandising support for the Hold Separate Hospitals' Businesses,*

so as to ensure that the Hold Separate Hospitals' Businesses remain (without limitation) economically viable as independent ongoing concerns with sufficient stocks to continue to provide the services they were providing prior to 13 April 2005."

11. Clause 6.3(a) is amended to read as follows:

"(a) Ramsay is entitled to receive and use:

- (i) all publicly available information and information already in the possession of Ramsay as at the Control Date;*
- (ii) all information necessary to enable Ramsay to comply with legal and reporting obligations in Australia, including taxation, accounting and ASX continuous and periodical disclosure obligations; and*
- (iii) such commercial and financial information compiled by Senior Management in respect of the Hold Separate Hospitals' Businesses as is reasonably necessary to enable the directors of Ramsay or its other related bodies corporate to fulfil their duties as directors; and"*

12. Clause 6.3(b) is amended to read as follows:

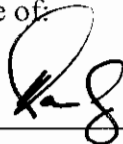
"The Ramsay Divestiture Team is entitled to receive and use all information necessary to enable Ramsay to effect any divestiture of the Divestiture Businesses."

13. Clause 6.4 is amended by deleting the words "Affinity Business" and inserting the words "Hold Separate Hospitals' Businesses".
14. Clause 7.1 of the Undertaking is amended to read as follows:
- "Ramsay undertakes that it will:*
- (a) *divest the New Affinity hospitals:*
 - (i) *to New Affinity in accordance with the Memorandum of Understanding at Annexure D; or*
 - (ii) *subject to and in accordance with clauses 7.4 and 7.6, to an alternative purchaser at such times and on such conditions (including as to price) as are approved from time to time by the Commission.*
 - (b) *subject to any direction in writing to the contrary by the Commission, divest the South Eastern (120 beds) and The Valley (124 beds) private hospitals; and*
 - (c) *divest the hospitals in Annexure E at such times and on such conditions (including as to price) as are approved from time to time by the Commission.*
15. Clause 7.3 of the Undertaking is amended by inserting the words "*or clause 7.1(a)(ii)*" after the words "*pursuant to clause 7.1(c)*".
16. Clause 7.4 of the Undertaking is amended by inserting the words "*or clause 7.1(a)(ii)*" after the words "*in accordance with clause 7.1(c)*".
17. Clause 7.5 of the Undertaking is amended by deleting the words:
- "pursuant to sub-clauses 7.1(b) or 7.1(c)"*
- and inserting the following words in their place:
- "pursuant to sub-clauses 7.1(a)(ii), 7.1(b) or 7.1(c)"*
18. Clause 7.6 is amended to read as follows:
- "The Commission will, until the Hold Separate Termination Date, be entitled at its absolute discretion to direct Ramsay on competition grounds to reject an offer communicated to the Commission under clause 7.5 from a third party to acquire one or more of the Divestiture Businesses from Ramsay and Ramsay will act in accordance with the Commission's direction."*
19. Clause 7.7 is deleted.
20. This Variation comes into effect when:
- (a) the Variation is executed by Ramsay; and

(b) the Variation so executed is accepted by the Commission.

Dated: 24 August 2005

SIGNED for **RAMSAY HEALTH CARE LIMITED**, by its duly authorised officer, in the presence of:



Signature of witness

Larry Reginald Ransley

Name

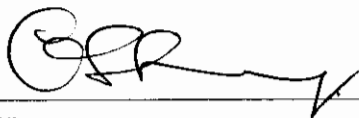


Signature of officer **DIRECTOR**

Bruce Roger Soden

Name

ACCEPTED by **THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION**



Chairman

Date: 30th August 2005

ANNEXURE E – Additional Hospitals to be divested by Ramsay

North Gosford Private Hospital

Belmont Private Hospital

Lingard Private Hospital