



**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.

The parties subsequently varied the Undertaking to limit the hold separate obligations to certain defined Hold Separate Hospitals.

Healthscope Limited (**Healthscope**) has since entered into an agreement with Ramsay (the **Healthscope sale agreement**) to acquire the majority of the Hold Separate Hospitals (the **Healthscope Hospitals**), and the Commission has confirmed that it does not oppose that acquisition. The Commission has also confirmed that it will not require Ramsay to divest North West Private Hospital.

The Healthscope sale agreement contains provisions requiring Ramsay to operate the Healthscope Hospitals in substantially the same manner as they were operated by Affinity Health immediately prior their acquisition by Ramsay. The Healthscope sale agreement also contains other restrictions on the manner in which Ramsay must operate these hospitals pending completion of the agreement. On this basis, Healthscope does not object to Ramsay having a role in the management of the Healthscope Hospitals pending completion of the Healthscope sale agreement.

Management of the Hold Separate Hospitals other than the Healthscope Hospitals (the **Remaining Hold Separate Hospitals**) is currently overseen by staff of the Healthscope Hospitals. This arrangement cannot continue as some or all of those staff will soon be employed by Healthscope. Ramsay believes that the size of the Remaining Hold Separate Hospitals as a group and the fact that Ramsay has undertaken to divest those hospitals mean that it is may not be feasible to appoint new senior managers to oversee the operations of these hospitals.

Ramsay therefore wishes to vary the Undertaking to allow a Ramsay employee to undertake a limited role in overseeing the management of the Hold Separate Hospitals.

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

### Variation to the Undertaking

1. Insert a new definition as follows:

*"Ramsay Manager" means such Ramsay employee as may be appointed by Ramsay to assist with management of the Hold Separate Hospitals upon the terms of set out in clause 6.5 who:*

- (a) *is approved by the Commission; and*
- (b) *gives to the Commission a confidentiality undertaking in the form annexed to this Undertaking as Annexure 'F'.*

2. Amend the definition of Senior Management to read as follows:

*"Senior Management" means the management team and senior personnel of the Hold Separate Hospitals and the Ramsay Manager.*

3. Clause 6.2(e)(ii) is amended to read as follows:

*"ensure that no information in relation to the Affinity Business is directly or indirectly requested or received by Ramsay, other than such information as may be requested by or provided to the Ramsay Manager to make management decisions or provide guidance in accordance with the terms set out in clause 6.5. "*

4. A new clause 6.5 is inserted as follows:

*"6.5 The involvement of the Ramsay Manager in the management of the Hold Separate Hospitals shall be limited as follows:*

- (a) *The Ramsay Manager may be consulted at the instigation of a CEO of a Hold Separate Hospital or (during the period in which Mr Mark Briscoe, Financial Controller, Operations for Affinity, may remain in that position) by Mark Briscoe in relation to those issues which, prior to the acquisition of the Affinity Business by Ramsay, they would have referred to senior management of the Affinity Business;*
- (b) *The CEO of each Hold Separate Hospital shall provide to the Ramsay Manager equivalent periodic reporting information in respect of that hospital as was provided to senior management of the Affinity Business prior to the acquisition of the Affinity Business by Ramsay;*
- (c) *The Ramsay Manager may intervene in the management of a Hold Separate Hospital business if, and only to the extent that, he believes that intervention is necessary to preserve the value or effective operation of that business;*

- (d) *The Ramsay Manager's involvement in the management of the Hold Separate Hospitals shall not be full time, but shall be limited to such time as required to ensure proper management of the hospitals; and*
- (e) *The Ramsay Manager must not be involved in the operational management of any Ramsay hospital other than the Hold Separate Hospitals whilst appointed to the position of Ramsay Manager*

5. Annexure C is amended by deleting the following hospital:

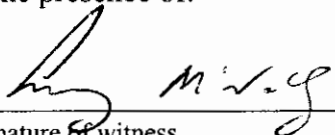
*North West Private Hospital (90 beds)*

6. 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:** 20 October 2005

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

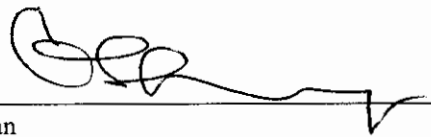
  
 \_\_\_\_\_  
 Signature of witness

PRÁIC McNALLY  
 \_\_\_\_\_  
 Name

  
 \_\_\_\_\_  
 Signature of officer

MICHAEL STODOL  
 \_\_\_\_\_  
 Name

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

  
 \_\_\_\_\_  
 Chairman

Date: 28 October 2005