

TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN UNDER SECTION 87B

BACKGROUND

1. LG Electronics Australia Pty Ltd, ABN 98 064 531 264 (**LG Australia**) is a corporation incorporated under the Corporations Law and registered in New South Wales.
2. LG Australia is a subsidiary of the Korean manufacturing company LG Electronics Inc and carries on business in Australia as an importer and wholesaler of electrical household appliances, including airconditioners.
3. LG Australia sells a number of models of airconditioners in Australia to which a regulatory regime for energy labelling and minimum energy performance standards apply. Pursuant to this regime, certain airconditioners are required to display energy efficiency labels (**Energy Labels**) which show (among other information) that airconditioner's:
 - (a) rated cooling capacity (and heating capacity, if applicable), measured in kW;
 - (b) comparative energy consumption for cooling (and heating, as applicable), equal to the rated power input of the airconditioner, measured in kW; and
 - (c) star rating for cooling (and heating, as applicable), derived by the application of a formula set out in the Australian/New Zealand Standard 3823 (**Standard**), with a higher number of stars corresponding with greater energy efficiency.(together, **Rated Values**)
4. LG Australia also publishes various Rated Values in respect of its airconditioners in applications for registration of airconditioners under the regulatory regime, on airconditioner nameplates, in brochures and in other advertising and promotional material.
5. The regulatory regime provides for tests (**check tests**) to be carried out by relevant authorities to determine the accuracy of the claimed values referred to in paragraph 3 above.
6. Check tests conducted on behalf of regulators including the Department of Energy, Utilities and Sustainability in New South Wales (**DEUS**), and Energy Safe Victoria, (previously, the Office of the Chief Electrical Inspector) (**Relevant Authorities**) have found that:
 - (a) the actual cooling output of a number of models of airconditioners sold by LG Australia between particular dates (the **Affected Models**) was less than 90% of the rated output;

- (b) the energy consumption of some of the Affected Models was more than the rated power consumption; and
- (c) the energy efficiency ratings of the Affected Models were lower than that claimed by LG Australia, and that of the LBNL6081BL/LBUL6080BL was lower than that required by the relevant Minimum Energy Performance Standards (MEPS).

7. The Affected Models are the following models of LG airconditioners sold in Australia between the dates set out below:

Model	Relevant dates of sale	Units sold in relevant period
LST182H-2	16 October 2002 – 14 December 2004	1,408
LST244T-2	24 October 2002 – 20 January 2004	724
LST244H-2	31 October 2002 – 22 October 2005	11,345
LBNL6081BL/ LBUL6080BL	3 September 2003 – 22 September 2005	1,291
LSZ182M-4	23 September 2004 – 20 October 2005	485

- 8. The Australian Competition and Consumer Commission (ACCC) has conducted an investigation in relation to the matter and raised concerns that LG Australia's conduct may have misled consumers, in contravention of sections 52 and 53(c) of the TPA.
- 9. LG Australia has expressed concern at a number of aspects of the testing conducted on behalf of the Relevant Authorities. Nevertheless, LG Australia accepts that performance of the Affected Models is likely not to comply with the Rated Values stated on the relevant energy labels.
- 10. As a result, it is likely that Affected Models may use more electricity for a given level of cooling output and, accordingly, cost more to run than would be the case if those airconditioners complied with the Rated Values stated on the relevant energy labels.
- 11. LG Australia wishes to compensate purchasers of Affected Models for this potential increase in operating costs. The ACCC has calculated and LG Australia has agreed an estimate of the potential difference in operating costs that may be experienced in respect of each model of Affected Model.
- 12. LG Australia has offered to give an undertaking in the terms set out in this document to the ACCC pursuant to section 87B of the *Trade Practices Act 1974 (TPA)* and the ACCC has agreed to accept this undertaking.

UNDERTAKINGS AND INTERPRETATION

13. LG Australia gives the following undertakings to the ACCC pursuant to section 87B of the TPA.
14. These undertakings come into effect when:
 - (a) the undertakings are given by LG Australia; and
 - (b) the ACCC accepts the undertakings so given.
15. These undertakings come to an end at the end of the day that is 3 years from the date that these undertakings come into effect.
16. Except where otherwise indicated, words or phrases that bear a defined meaning for the purposes of the TPA shall bear the same meaning in these undertakings.

AIRCONDITIONER TESTING PROCEDURES

17. Subject to paragraph 21, in respect of each model of airconditioner offered for sale to consumers, after 60 days after the coming into effect of this undertaking, LG Australia will only publish or advertise (including, without limitation, in Energy Labels) Rated Values where LG Australia reasonably believes and has evidence that an Agreed Testing Facility has obtained those Rated Values –
 - (a) using the Australian market version of the relevant model of airconditioner; and
 - (b) in accordance with the Standard.
18. Where a number of similar models are sold in Australia, test results obtained from testing of one model will only be used in determining Rated Values for another model where the two models are in all respects mechanically identical. (For example, if one model features, say, a particular coating on the evaporation fins and another does not, separate tests must be conducted to determine the Rated Values for each model.)
19. An Agreed Testing Facility refers to:
 - (a) a testing facility in Australia accredited by the National Association of Testing Authorities;
 - (b) Korea Testing Laboratory of 222-13 Guro3-dong Guro-gu Seoul (152-718), Korea; or
 - (c) such other testing facility as may be agreed with the ACCC from time to time.
20. Where an Agreed Testing Facility does not have the capacity to test the number of models manufactured and provided by LG Australia or LG Electronics Inc, to satisfy the requirements of this undertaking, LG Electronics Inc may, under the supervision of a representative from an Agreed Testing Facility, test a model of airconditioner. The representative shall be required to certify that the test was conducted in accordance with paragraph 17 above.

21. Paragraph 17 shall not apply in respect of the outdoor compressor component of airconditioning systems that are sold as separate indoor and outdoor parts where:
- (a) the outdoor component is being sold for the purpose of completing an airconditioning system; and
 - (b) the indoor component of that airconditioning system was sold by LG Australia prior to expiry of the 60 day period referred to in paragraph 17.

COMPENSATION TO CONSUMERS

22. For a period of six months commencing on the date of publication of the first of the advertisements referred to in paragraph 25(d), LG Australia will offer the cash rebates set out in paragraph 23 to consumers who:
- (a) state that they relied on representations by LG Australia in respect of any Rated Value when purchasing any of the Affected Models; and
 - (b) provide LG Australia with proof of purchase or other evidence reasonably establishing their ownership of an Affected Model of airconditioner.
23. The cash rebates referred to in paragraph 22 are as follows:

Affected Model	Rebate amount
LST182H-2	\$71.54
LST244T-2	\$208.28
LST244H-2	\$198.22
LBNL6081BL/LBUL6080BL	\$436.77
LSZ182M-4	\$89.42

24. By a date no later than 30 days after the end of the six month period referred to in paragraph 22, the Compliance Advisor appointed pursuant to paragraph 2 of Attachment D shall provide a report to the ACCC detailing:
- (a) the processes implemented by LG Australia to effect the cash rebate offer described in paragraph 22;
 - (b) the number of consumers of each Affected Model that were contacted by LG Australia in relation to the cash rebate offer described in paragraph 22;
 - (c) the number of consumers of each Affected Model that contacted LG Australia in relation to the cash rebate offer described in paragraph 22;
 - (d) the number of consumers of each Affected Model that received a cash rebate from LG Australia; and

- (e) if any consumers contacted LG Australia but did not receive a cash rebate, the reasons why they did not receive a cash rebate.

CORRECTIVE NOTICES

25. By a date not later than 30 days after the date on which these undertakings come into effect, LG Australia will:

- (a) provide its airconditioner resellers with a corrective notice substantially in the form of the notice set out in Attachment A of these undertakings;
- (b) use its reasonable endeavours to procure that LG Australia's airconditioner resellers provide LG Australia with details of customers who have purchased an Affected Model from them. Upon receipt of those details, LG Australia shall send those customers a corrective notice substantially in the form of the notice set out in Attachment B of these undertakings. If particular resellers do not agree to provide LG Australia with details of customers who have purchased Affected Models from them, LG Australia shall use its reasonable endeavours to procure that those resellers send those customers a corrective notice substantially in the form of the notice set out in Attachment B of these undertakings;
- (c) conduct a search of all records within its control of purchasers of Affected Models and send to those purchasers a corrective notice substantially in the form of the notice set out in Attachment B of these undertakings;
- (d) publish an advertisement substantially in the form set out in Attachment C on 2 occasions (one being a Saturday) in the following newspapers:
 - (i) The Australian;
 - (ii) The Sydney Morning Herald;
 - (iii) The Age;
 - (iv) The Canberra Times;
 - (v) The Courier Mail;
 - (vi) The Northern Territory News;
 - (vii) The Advertiser; and
 - (viii) The Western Australian, anduse its best endeavours to ensure that such advertisements:
 - (ix) are within the first 20 pages of the newspapers;
 - (x) are of a size not less than 120mm x 120mm;
 - (xi) are in a text which is in a type not less than 10 points; and

- (xii) include LG's logo,
- (e) place a corrective notice substantially in the form set out in Attachment C on the airconditioner home page of LG Australia's websites at www.lge.com.au and www.lg.com.au and maintain it there for a period of not less than 2 months. Such notice shall appear in an automatically generated pop-up window or message box and shall appear immediately to consumers on access to the airconditioner home page of the websites; and
- (f) place a link in the "What's New" section of the home page of LG Australia's websites at www.lge.com.au and www.lg.com.au to the notice referred to paragraph (e) above and maintain that link for a period of not less than two months.

TRADE PRACTICES COMPLIANCE PROGRAM

26. LG Australia will:

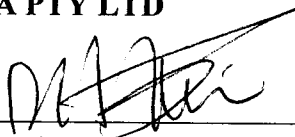
- (a) review its existing trade practices compliance program;
- (b) implement an upgraded trade practices compliance program in accordance with the requirements set out in Attachment D for employees or other persons involved in LG Australia's business, being a program designed to minimise its risk of future breaches of Part V of the TPA and to ensure their awareness of the responsibilities and obligations in relation to the requirements of sections 52 and 53 of the TPA, by a date not later than 3 months after the date on which these undertakings come into effect (**Compliance Program**); and
- (c) provide, at its own expense, a copy of any documents requested by the ACCC under clauses 8 and 10 of Attachment D.

ACKNOWLEDGEMENTS

- 27. LG Australia acknowledges the ACCC's right to make these undertakings available to the public, including by placing them on a register and publishing them.
- 28. LG Australia acknowledges that the ACCC may issue a media release about these undertakings and may, from time to time, publicly refer to the undertakings.
- 29. LG Australia acknowledges and accepts that these undertakings in no way derogate the rights and remedies available to any other person arising from the alleged conduct.

DATED: 13 ~~August~~ ^{September} 2006


**EXECUTED by LG ELECTRONICS
AUSTRALIA PTY LTD**



Signature of director

Daniel Shim

Name



Signature of director/secretary

Howard Choi

Name

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



.....
Chairman

Date: 20 ~~August~~ ^{September} 2006 

ATTACHMENT A - CORRECTIVE NOTICE TO RESELLERS

[LG Australia Letterhead]

Dear [Store Manager]

Corrective Notice and Offer of Compensation Rebate

We are writing to advise that claims made by LG in relation to the performance of a number of models of airconditioner may have been incorrect and may have misled consumers. LG is offering affected consumers a rebate. We would like your assistance to ensure that this offer is brought to the attention of any of your customers who may have purchased an affected model of airconditioner (**Affected Models**).

Affected Models are those models of airconditioner listed below sold between the dates shown:

Model	Relevant dates of sale
LST182H-2	16 October 2002 onwards
LST244T-2	24 October 2002 – 20 January 2004
LST244H-2	31 October 2002 onwards
LBNL6081BL/ LBUL6080BL	3 September 2003 – 22 September 2005
LSZ182M-4	23 September 2004 onwards

Check tests conducted on behalf of the Department of Energy, Utilities and Sustainability in New South Wales and Energy Safe Victoria have found that:

- (a) the actual cooling output of Affected Models was less than 90% of the rated output;
- (b) the energy consumption of some of the Affected Models was more than the rated power consumption; and
- (c) the energy efficiency ratings of the Affected Models were lower than that claimed by LG and, in the case of the LBNL6081BL/LBUL6080BL, did not meet MEPS.

The Australian Competition and Consumer Commission (ACCC) has conducted an investigation in relation to the matter and raised concerns that Affected Models may use more electricity for a given level of cooling output and, accordingly, cost more to run than would be the case if those airconditioners complied with the rated values stated on the relevant energy labels.

LG wishes to compensate purchasers of Affected Models for this potential increase in operating costs. In this regard, LG requests that you provide us with contact details of all customers who have purchased an Affected Model from you so that we can write to customers to advise them of the rebate offer.. LG Australia will, of course, reimburse you for all costs reasonably incurred in complying with this request.

Please contact [LG Australia contact] on [contact phone], if you have any queries about this letter. *[LG may wish to add a statement thanking the supplier for its assistance/apologising for any inconvenience caused]*

ATTACHMENT B - CORRECTIVE NOTICE TO PURCHASERS

[LG Australia Letterhead]

Dear Customer

Corrective Notice and Offer of Compensation Rebate

We are writing to you because we believe you may have purchased one of the models of airconditioner listed below sold between the dates shown (**Affected Models**):

Model	Relevant dates of sale
LST182H-2	16 October 2002 onwards
LST244T-2	24 October 2002 – 20 January 2004
LST244H-2	31 October 2002 onwards
LBNL6081BL/ LBUL6080BL	3 September 2003 – 22 September 2005
LSZ182M-4	23 September 2004 onwards

Check tests conducted on behalf of the Department of Energy, Utilities and Sustainability in New South Wales and Energy Safe Victoria have found that:

- (a) the actual cooling output of these models was less than 90% of the claimed output;
- (b) the energy consumption of some of these models was more than the claimed power consumption; and
- (c) the energy efficiency ratings of these models were lower than that claimed by LG.

The Australian Competition and Consumer Commission (ACCC) has conducted an investigation in relation to the matter and raised concerns that Affected Models may use more electricity for a given level of cooling output and, accordingly, cost more to run than would be the case if those airconditioners complied with the rated values stated on the relevant energy labels.

LG wishes to compensate purchasers of Affected Models for this potential increase in operating costs. The ACCC and LG have calculated a rebate amount for each Affected Model based on an estimate of the difference in operating costs that may be experienced in respect of each model.

If you purchased any of the Affected Models of airconditioner between the dates listed above and relied on representations made by LG in relation to the cooling capacity, power consumption or efficiency of that airconditioner, LG Australia will pay you a rebate as set out below:

Affected Model	Rebate amount
LST182H-2	\$71.54
LST244T-2	\$208.28
LST244H-2	\$198.22
LBNL6081BL/LBUL6080BL	\$436.77
LSZ182M-4	\$89.42

To claim your rebate, please forward details of your name, address and contact phone numbers, together with proof of purchase (or other evidence reasonably establishing your ownership of an Affected Model of airconditioner) before ***[insert date that is not less than six months after commencement of corrective advertising]*** to the address listed below:

[Name of responsible contact person]
[LG Australia address]

Please contact **[LG Australia contact]** on **[contact phone]**, if you have any queries about this letter.

ATTACHMENT C - CORRECTIVE ADVERTISEMENT



Important Notice – Compensation Rebate Offer on Certain LG Airconditioners

The Australian Competition and Consumer Commission (ACCC) has brought to our attention that the cooling capacity, power consumption and efficiency of some LG airconditioners do not meet the ratings claimed by LG.

As a result, these airconditioners may use more electricity for a given level of cooling output and therefore cost more to run than would be the case if those airconditioners complied with the rated values stated on the relevant energy labels.

LG wishes to compensate purchasers of affected models. The ACCC and LG have calculated a rebate amount for each affected model, based on an estimate of the potential difference in operating costs that may be experienced in respect of each model.

Airconditioners affected are those listed below sold between the dates shown:

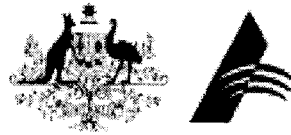
Model	Relevant dates of sale	Rebate
LST182H-2	16 October 2002 onwards	\$71.54
LST244T-2	24 October 2002 – 20 January 2004	\$208.28
LST244H-2	31 October 2002 onwards	\$198.22
LBNL6081BL/LBUL6080BL (combination)	3 September 2003 – 22 September 2005	\$436.77
LSZ182M-4	23 September 2004 onwards	\$89.42

If you purchased an affected airconditioner between the dates listed above and relied on representations made by LG in relation to the cooling capacity, power consumption or efficiency of that airconditioner, LG Australia will pay you a rebate as set out above.

To claim your rebate, please forward [details of your name, address and contact phone numbers, together with proof of purchase (or other evidence reasonably establishing your ownership of an Affected Model of airconditioner) before *[insert date that is not less than six months after commencement of corrective advertising]* to the address listed below:

[Insert contact address and phone details]

This notice has been paid for by LG Australia and placed in compliance with an undertaking given to the ACCC by LG.



ATTACHMENT D

TRADE PRACTICES COMPLIANCE PROGRAM

LG Australia will establish a Trade Practices Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. By a date not later than one month after the date on which these undertakings come into effect LG Australia will appoint a Director or a Senior Manager with suitable qualifications or experience in corporate compliance as Compliance Officer with responsibility for ensuring the Compliance Program is effectively designed, implemented and maintained.
2. By a date not later than two months after the date on which these undertakings come into effect LG Australia shall appoint a qualified, internal or external, compliance professional with expertise in trade practices issues (the **Compliance Advisor**). LG Australia shall instruct the Compliance Adviser to conduct a Trade Practices Act risk assessment (**Risk Assessment**) in accordance with paragraphs (i) to (iv) below:
 - (i) identify the areas where LG Australia is at risk of breaching Part V of the *Trade Practices Act 1974 (TPA)*;
 - (ii) assess the likelihood of these risks occurring and the consequences of the risks to the business operations of LG Australia should they occur;
 - (iii) identify where there may be gaps in LG Australia's existing procedures for managing these risks; and
 - (iv) provide recommendations for action having regard to the assessment.

Compliance Policy

3. LG Australia will, by a date not later than 30 days after the date on which these undertakings come into effect, issue a policy statement outlining LG Australia's commitment to trade practices compliance (the **Compliance Policy**). LG Australia will ensure that the Compliance Policy:
 - (i) is written in plain language;
 - (ii) contains a statement of commitment to compliance with the TPA;
 - (iii) contains a strategic outline of how commitment to trade practices compliance will be realised within LG Australia;

- (iv) contains a requirement for all staff to report any compliance related issues and trade practices compliance concerns to the Compliance Officer; and
- (v) contains a clear statement that LG Australia will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the TPA and will not indemnify them in respect of penalties that may be imposed in respect of such contraventions.

Complaints Handling System

- 4. LG Australia will ensure that the Compliance Program includes a trade practices complaints handling system. LG Australia will ensure that staff and customers are made aware of the complaints handling system.

Reports to Board/Senior Management

- 5. LG Australia will ensure that the Compliance Officer reports to the Board and/or senior management meetings every 6 months on the continuing effectiveness of the Compliance Program.

Training

- 6. LG Australia will ensure that the Compliance Program provides for regular (at least once a year) and practical trade practices training for all directors, officers, employees, representatives and agents of LG Australia, whose duties could result in them being concerned with conduct that may contravene Part V of the TPA. LG Australia must ensure that the training is conducted by either a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
- 7. LG Australia will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new directors, officers, employees, representatives and agents, whose duties could result in them being concerned with conduct that may contravene Part V of the TPA.

Supply of Compliance Program Documents to the ACCC

- 8. LG Australia shall, at its own expense, by a date not later than 3 months after the date on which these undertakings come into effect, cause to be produced and provided to the ACCC copies of each of the documents constituting the Compliance Program.

Review

- 9. LG Australia shall, at its own expense, cause annual reviews of the Compliance Program (the **Reviews**) to be carried out in accordance with each of the following requirements:
 - (a) Independence of Reviewer - LG Australia shall ensure that the Reviews are carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (the **Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
 - (i) did not design or implement the Compliance Program;

- (ii) is not a present or past staff member or director of LG Australia;
 - (iii) has not acted and does not act for LG Australia in any trade practices related matters;
 - (iv) has not and does not act for or consult to LG Australia or provide other services on trade practices related matters other than Compliance Program reviewing; and
 - (v) has no significant shareholding or other interests in LG Australia.
- (b) Scope of the Reviews - the Reviews should be broad and rigorous enough to enable the Reviewer to reliably conclude that LG Australia has in place a program that complies with each of the requirements detailed in paragraphs 1-7 above and to provide the Review reports and opinions detailed at paragraph 10 below;
- (c) Evidence - LG Australia shall use its best endeavours to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in LG Australia's possession or control, including without limitation:
- (i) enquiries of any officers, employees, representatives, agents and stakeholders of LG Australia;
 - (ii) LG Australia's records, including LG Australia's complaints register/reports and any documents relevant to LG Australia's training or induction program; and
 - (iii) documents created by LG Australia's consultants and legal practitioners for use in LG Australia's Compliance Program.
- (d) LG Australia shall ensure that the first Review is completed by a date not later than one year and one month after the date on which these undertakings come into effect and that each subsequent Review is completed within one year thereafter.

Reporting

10. LG Australia shall use its best endeavours to ensure the Reviewer sets out the findings of the Review in two separate reports as set out below:
- (a) Company Compliance Program Review Report (to be provided to LG Australia)
- LG Australia's Company Review Report will provide particular and specific information regarding the performance of the Compliance Program to the corporation including:
- (i) If, and to what extent, the Compliance Program of LG Australia includes all the elements detailed in paragraphs 1-7 above;
 - (ii) If, and to what extent, the Compliance Program adequately covers the parties and areas identified in the initial Risk Assessment;
 - (iii) If, and to what extent, the trade practices training is effective;

- (iv) If, and to what extent, LG Australia's complaints handling system is effective; and
- (v) Recommendations for rectifying deficiencies in (i)-(iv). above that the Reviewer thinks are reasonable necessary to ensure that LG Australia maintains and continues to implement the Compliance Program in accordance with the requirements of these undertakings.

(b) Commission Compliance Program Review Report (to be provided to the ACCC)

The Commission Review Report will provide particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:

- (i) details of the evidence gathered and examined during the Review;
- (ii) the name and relevant experience of the person appointed as the company Compliance Officer;
- (iii) the Reviewer's opinion on whether LG Australia has in place a Compliance Program that complies with the requirements detailed in paragraph 1-7 above;
- (iv) the Reviewer's opinion on if, and to what extent, LG Australia has complied with the Compliance Program component of these undertakings;
- (v) actions recommended by the Reviewer to ensure the continuing effectiveness of LG Australia's Compliance Program;
- (vi) confirmation that any actual and potential inadequacies in LG Australia's Compliance Program have been brought to the attention of the Compliance Officer and the Board;
- (vii) confirmation that the Reviewer has revisited any actual and potential inadequacies in LG Australia's Compliance Program identified in any previous Company Compliance Program Review Report, and assessed how they have been addressed by LG Australia;
- (viii) any reservations that the Reviewer might have about the reliability and completeness of the information to which the Reviewer had access in the conduct and reporting of the Review; and
- (ix) any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.

- 11. LG Australia will ensure that the Review Reports are completed and provided to LG Australia within two months of each Review.
- 12. LG Australia will retain the Company Compliance Program Review Report and cause the Commission Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.

13. Recommendations - LG Australia shall implement promptly and with due diligence any recommendations made by the Reviewer that are reasonably necessary to ensure that LG Australia maintains and continues to implement the Compliance Program in accordance with the requirements of these undertakings.