

TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B

BY

iSELECT HEALTH PTY LTD (ACN 088 749 955)

GLOSSARY

“**ancillary cover**” means cover provided under health insurance policies for expenses incurred in respect of non-hospital services.

“**class of consumer**” means a single person, a couple, a single parent or a family.

“**combined cover**” means both hospital cover and ancillary cover provided under health insurance policies.

“**hospital cover**” means cover provided under health insurance policies for expenses incurred in respect of medical services provided by hospitals and by medical practitioners in hospitals.

“**iSelect’s policy database**” means iSelect’s list of policies offered by private health insurers who have authorised iSelect to offer those policies to consumers on their behalf.

PERSON GIVING UNDERTAKING

- 1 This Undertaking is given to the Australian Competition and Consumer Commission (“**the Commission**”) by iSelect Health Pty Ltd (formerly known as iSelect Pty Ltd) (ACN 088 749 955) (“**iSelect**”) of Level 4, 973 Nepean Highway, Moorabbin in the State of Victoria under section 87B of the *Trade Practices Act 1974* (“**the Act**”).

BACKGROUND

- 2 iSelect provides a service that is free of charge to the Australian public which includes comparing and recommending health insurance policies to consumers via its call centre (“**iSelect’s call centre**”) and an online search engine on its website (“**iSelect’s internet search engine**”).
- 3 iSelect guides consumers through a series of questions relating to their health insurance needs, budget and preferences. Based on their responses, iSelect provides the consumer with a shortlist of recommended policies taken from

iSelect's policy database. iSelect can arrange for consumers to purchase the policies in iSelect's policy database.

- 4 From about June 2002 to August 2007 iSelect made various statements on its website, in brochures which it distributed and through radio, television and press advertisements about the range of health insurance policies compared by iSelect, which included:

- (a) representations about the number of policies compared by iSelect (made between about May 2005 and August 2007), such as the following:

"We compare your health insurance policy with hundreds of others";

"We compare hundreds of policies from participating funds";

"Compare hundreds of health policy combinations from a range of health funds";

"They compared hundreds of different health insurance policies for me and I got a better deal";

- (b) representations about the number of policies on iSelect's policy database (made between June 2002 and December 2006), such as the following:

"We remove the headache, by searching over 2000 policies across many health funds";

"The iSelect system allows you to sort through over 2000 health insurance products";

"Our wide plan selection covering over 2,000 policy combinations...";

"iSelect has assembled a first class range of participating funds offering over hundreds of policy combinations";

- (c) representations about finding a policy for a consumer's needs (made between June 2002 and June 2007), such as the following:

"we help you find the best cover to suit your needs and budget";

"Let us prescribe the best policy for your budget and needs";

"compare health insurance policies now" (on a button on iSelect's website next to a listing of all Australian health insurance funds); and

“You can get Health insurance the old way, by going round to all the health funds, analysing all the paperwork, or you can use the online comparison engine at iselect.com.au”.

The Commission’s concerns

- 5 The Commission recognises that the service offered by iSelect is a business response to the complex and voluminous choices available to Australian consumers seeking appropriate health insurance. The Commission appreciates that iSelect is an independent intermediary service designed to assist consumers in selecting a health insurance policy that may be suitable for their needs and situation without incurring any costs. The Commission is not critical of the service provided by iSelect but is concerned to ensure that consumers are not misled as to the nature and scope of the features of its service.
- 6 The Commission is concerned that the representations made by iSelect referred to in paragraph 4 above were likely to mislead consumers as to the range of health insurance policies which iSelect compared. The Commission considers that by making such representations iSelect engaged in conduct in contravention of sections 52, 53(c) and 55A of the Act.
- 7 The reasons the Commission considered the representations were likely to mislead are as follows.

Representations about the number of policies that iSelect’s internet search engine and call centre compare for a consumer

- 8 The Commission is of the view that the representations made by iSelect referred to in paragraph 4(a) above were likely to convey to consumers that iSelect’s internet search engine and call centre compare for a consumer who requests a policy recommendation through iSelect’s internet search engine or call centre hundreds of health insurance policies.
- 9 iSelect has advised the Commission that iSelect’s policy database contained hundreds of health insurance policies and at least 2000 health insurance policy combinations at the relevant times.
10. iSelect has advised the Commission that its call centre has the capacity to compare a larger number of policies than its search engine and that if requested by a consumer, iSelect’s call centre can compare a consumer’s existing policy to a significant portion of health insurance policies publicly available in Australia.
- 11 iSelect has advised the Commission that iSelect’s call centre compared hundreds of policy combinations when recommending a policy or a combination of policies providing combined cover at the relevant times.

- 12 When iSelect's call centre recommended for any particular class of consumer a policy providing only hospital cover or only ancillary cover or when iSelect's internet search engine recommended a policy for any particular class of consumer there were less than 200 policies compared at the relevant times.
- 13 Accordingly, the Commission considers that iSelect misrepresented that:
- (a) iSelect's internet search engine compared hundreds of policies for any class of consumer who requested a policy recommendation; and
 - (b) iSelect's call centre compared hundreds of policies for any class of consumer who requested a policy recommendation providing only hospital cover or ancillary cover.

Representations about the proportion of health insurance policies available that iSelect's internet search engine and call centre compare for a consumer

- 14 The Commission is of the view that the representations made by iSelect referred to in paragraphs 4(a) and (b) above were likely to mislead consumers into believing that iSelect's internet search engine and call centre compare a significant proportion of health insurance policies available to consumers in Australia and the health insurance policies offered by a significant proportion of health insurers from whom consumers could purchase health insurance.
- 15 In the Commission's view, the reference in the representations to the large number of policies which iSelect compared or from which iSelect made its policy recommendations, was likely to give the impression to the ordinary consumer of health insurance that that was a significant number in the context of the health industry as a whole. However, iSelect's policy database has comprised generally at any one time of policies offered by between 3 and 7 insurers, with a maximum of 12 (which since 2005 has not included the 3 largest insurers) when there were approximately 24 private health insurers available to the general public in Australia.

Representations about finding the best policy for a consumer's needs at the lowest price

- 16 The Commission is of the view that the representations referred to in paragraph 4(c) above were likely to convey to consumers that iSelect's call centre and/or internet search engine compare for them all the health insurance policies available to them and can find the best suited health insurance policy for a consumer's needs at the lowest price.
- 17 iSelect has advised the Commission that its call centre has the capacity to compare a larger number of policies than its search engine and that if requested by a consumer, iSelect's call centre can compare a consumer's existing policy to a significant portion of health insurance policies publicly available in Australia. However, iSelect's internet search engine and call centre have never compared for consumers all the health insurance policies available to them in Australia.

- 18 The Commission is therefore concerned that the representations referred to in paragraph 4(c) above misrepresented that iSelect's call centre and/or search engine compared for consumers all the health insurance policies available to them in Australia and could find the best suited policy for a consumer's needs at the lowest price.

iSelect's views and intentions

- 19 iSelect does not admit that the representations of concern to the Commission were misleading in contravention of the Act.
- 20 iSelect contends that it did not intend to convey by making the representations referred to in paragraphs 4(a) above that its internet search engine and call centre compared hundreds of policies for every consumer who requested a policy recommendation. Rather, iSelect contends that by making those representations it intended to convey that its policy database comprised of hundreds of policies.
- 21 iSelect contends that it did not intend to convey by making the representations referred to in paragraphs 4(a) and (b) above that its internet search engine and call centre compared a significant proportion of health insurance policies available to consumers in Australia.
- 22 iSelect further contends that it did not intend to convey by making the representations referred to in paragraph 4(c) above that its internet search engine and call centre compared for consumers all the health insurance policies available to them and could find the best suited policy for a consumer's needs at the lowest price.

Resolution of concerns

- 23 The Commission has acknowledged in principle the role and scope for bodies in service industries (offering, for example, health insurance, general insurance, financial services, mortgages etc) to provide a means of assisting consumers to make informed purchase decisions by offering comparison and evaluative services particularly where there is a degree of complexity or difficulty involved in readily comparing and understanding products.
- 24 The Commission's concerns relate in this instance to the representations made by iSelect in its promotional activities and the Commission does not assert that the substance of the actual policy comparisons or recommendations made by iSelect to particular consumers were in any way false, misleading or deceptive.
- 25 In response to the Commission's concerns, iSelect amended and ceased certain representations of concern to the Commission and reviewed its website and promotional material. In order to resolve this matter, iSelect has offered without admission of liability to give this undertaking to the Commission pursuant to section 87B of the Act.

COMMENCEMENT OF UNDERTAKING

- 26 This Undertaking comes into effect when:
- (a) the Undertaking is executed by iSelect; and
 - (b) the Commission accepts this Undertaking so executed by iSelect.

UNDERTAKINGS

- 27 iSelect hereby undertakes for a period of 3 years from the date of commencement of the Undertaking the following for the purposes of section 87B of the Act.
- 28 iSelect undertakes that it will, whether by itself, its directors, servants, agents or otherwise howsoever, not make, or cause to be made, any representation as to the number of health insurance policies which an iSelect facility (such as its internet search engine or call centre) compares for consumers by reference to a number or range of numbers, unless that facility at the time the representation is made ordinarily considers and is able to consider when recommending a policy or policy combinations providing either hospital cover, ancillary cover or hospital and ancillary cover for a particular person or persons, policies or policy combinations which provides such cover to that particular person or persons in the number or range of numbers referred to in the representation.
- 29 iSelect undertakes that it will, whether by itself, its directors, servants, agents or otherwise howsoever, not make, or cause to be made, any representation that an iSelect facility (such as its internet search engine or call centre) compares or selects from more than a hundred policies for consumers unless at the time the representation is made:
- (a) that facility ordinarily considers and is able to consider when recommending a policy or policy combinations providing either hospital cover, ancillary cover or hospital and ancillary cover for a particular person or persons:
 - (i) policies offered by at least 70% of the health funds who are listed in the annual report of the Private Health Insurance Ombudsman issued immediately preceding the representation being made (**“the PHIO report”**) which provide health insurance to the general Australian public and which provide the type of cover being recommended (i.e. hospital cover, ancillary cover or hospital and ancillary cover) to that particular person or persons; or
 - (ii) at least 70% of the policies available to the general Australian public which provide the type of cover being recommended to that particular person or persons; or

- (iii) policies offered by at least 50% of the ten health funds who in the PHIO report are identified as having the greatest share of the market for health insurance to the general Australian public including at least one of the three funds who in the PHIO report are identified as having the greatest share of the market for health insurance to the general Australian public;

and

- (b) that facility prominently discloses to consumers prior to recommending a policy or policies to them that the health insurance companies who offer the policies which that facility compares for consumers are not the only health insurance companies who offer health insurance policies to consumers (where that is the case);

and

- (c) where that facility is iSelect's call centre, that facility prior to recommending a policy or policies to consumers:
 - (i) prominently discloses to consumers the number of health insurance companies who offer the policies which that facility ordinarily compares for consumers; and
 - (ii) informs consumers that the names of the health insurance companies who offer the policies which the iSelect call centre ordinarily compares for consumers can be provided to them by iSelect upon request, and then readily provides such information to a consumer if requested to do so by the consumer;

and

- (d) where that facility is not iSelect's call centre, that facility prior to recommending a policy or policies to consumers prominently discloses to consumers the names of the health insurance companies who offer the policies which that facility ordinarily compares for consumers.

30 iSelect undertakes that it will, whether by itself, its directors, servants, agents or otherwise howsoever, not make, or cause to be made, any representation that an iSelect facility (such as its internet search engine or call centre):

- (a) when recommending a particular type of health insurance policy which provides cover for a particular person or persons, compares or is able to compare all insurance policies of that type which provide cover to that person or persons; or
- (b) is able to recommend to consumers the cheapest policy available providing the cover they require;

unless

- (c) that facility at the time the representation is made ordinarily considers and is able to consider when recommending a policy providing hospital and ancillary cover, hospital cover or ancillary cover to a particular person or persons who reside in Australia, every policy available for purchase which provides such cover to that particular person or persons; and
- (d) that facility at the time the representation is made ordinarily recommends and is able to recommend to any consumer the cheapest policy available for purchase by that consumer which provides the health cover in Australia which the consumer requires.

31 iSelect undertakes that within 30 days of this Undertaking coming into effect, it will send a letter in the form and terms of “**Annexure A**” to all persons for whom it arranged to purchase a health insurance policy between 31 December 2005 and 31 December 2006.

32 iSelect undertakes that it will:

- (a) for a period of three years from the date of this Undertaking coming into effect continue to maintain and strengthen its existing Trade Practices Compliance Program for the employees or other persons involved in iSelect’s business, being a program designed to minimise its risk of future breaches of Part V of the Act and to ensure their awareness of the responsibilities and obligations in relation to the requirements of Part V of the Act (“**the Compliance Program**”);
- (b) use its best endeavours to ensure that the Compliance Program complies with Australian Standard on Compliance Programs AS3806 and is tailored to suit iSelect’s circumstances;
- (c) at its own expense, within 3 months of the date of this Undertaking coming into effect, cause to be produced and provided to the Commission copies of documents and information in respect of matters which are the subject of the Compliance Program;
- (d) thereafter, at its own expense, if requested by the Commission to provide the Commission with copies of documents and information in respect of matters which are the subject of the Compliance Program, provide to the Commission such documents and information within seven days of receiving that request;
- (e) in the event that the Commission notifies iSelect that it has reason to believe that the Compliance Program is not being implemented effectively, iSelect will at its own expense and if requested by the Commission, cause a Review to be conducted and carried out by a suitably qualified independent compliance professional with expertise in trade practices law and compliance and cause the resulting Review to be

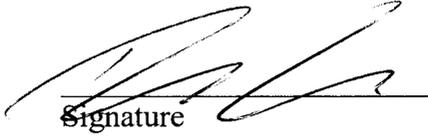
provided to the Commission within two months of the Commission making its request;

- (f) iSelect will implement promptly and with due diligence any recommendations made by the Reviewer or required by the Commission, that are reasonably necessary to ensure that iSelect maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking; and
- (g) use its best endeavours to cause an independent third party with experience in trade practices compliance programs to:
 - (i) review iSelect's trade practices compliance program at the end of each 12 month period following the acceptance of this undertaking until the third anniversary of the acceptance of this undertaking; and
 - (ii) report to iSelect's Board and the Commission within 30 days of the end of each 12 month period as to whether iSelect has complied with the obligations under paragraphs 32(a) and(b) above.

Acknowledgments

- 33 iSelect acknowledges that the Commission will make this undertaking available for public inspection.
- 34 iSelect further acknowledges that the Commission will from time to time publicly refer to this undertaking.
- 35 iSelect further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed by iSelect Health Pty Ltd)
(ACN 088 749 955) by its authorised officers)
pursuant to section 127(1) of the Corporations Act 2001)


Signature


Signature

DAMIEN WALKER
Print name

DAVID VICARY
Print name

DIRECTOR
Office held

DIRECTOR
Office held

This 1st day of NOVEMBER 2007

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


Graeme Julian Samuel
Chairman

This 7th day of November 2007

Annexure A

Dear *[insert the name of the addressee]*

In *[insert the month when the addressee purchased a policy through iSelect]* iSelect arranged for you to purchase a health insurance policy providing *[insert the type of cover provided by the policy which was purchased]*. You purchased that policy following a policy recommendation made to you by iSelect.

The Australian Competition and Consumer Commission (ACCC) which administers the *Trade Practices Act 1974* (Cth) (the Act) raised some concerns with iSelect that certain representations made by iSelect in its advertising and promotional material may have misled consumers regarding the range of health insurance policies which iSelect compared when recommending a policy/policies to a consumer. Your policy was purchased at the time when the representations of concern to the ACCC were being made by iSelect.

In order to address the ACCC's specific concerns, iSelect is writing to inform you that iSelect's policy recommendation to you was based on a consideration of policies offered by *[insert the number of health insurance companies whose policies iSelect considered when making a policy recommendation to the addressee]* insurance companies.

I also wish to inform you that at the time the representations were made there were approximately 24 companies which offered health insurance to the general Australian public. Approximately half of these companies are smaller health funds each comprising less than 1% of the total private health insurance market in Australia and most of the policy sales of each of these companies take place in only one State.

This letter is being sent to you pursuant to court enforceable undertakings which iSelect gave to the ACCC. As part of those undertakings, iSelect also undertook not to continue making the representations which were of concern to the ACCC.

It is important for you to be aware that the concerns of the ACCC do not relate or extend in any manner whatsoever to the adequacy of your policy or the health insurance company from which your policy was purchased.

If you would like further information or have any questions about iSelect's services, please call us on xxxxxxxx.

Yours sincerely

[insert name and position of iSelect representative]