

TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION GIVEN FOR THE PURPOSE OF SECTION 87B

BY

DELL AUSTRALIA PTY LTD

(A.C.N. 003 855 561)

PERSONS GIVING THIS UNDERTAKING

1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Dell Australia Pty Ltd (A.C.N. 003 855 561) (**Dell**) of Building 3, 14 Aquatic Drive, Frenchs Forest in the state of New South Wales, under section 87B of the *Trade Practices Act 1974* (**TPA**).

BACKGROUND

Dell's Business

2. Dell is a corporation incorporated in Australia. Dell carries on a business in Australia as a retailer of computer hardware, software products and peripherals to businesses and consumers (**computer products**).
3. Dell supplies products to consumers directly, as a result of orders placed by consumers on Dell's website at www.dell.com.au (**Website**) and by telephone. Dell's products are also available from third party suppliers and via on-line auctions.
4. Dell and many other suppliers supply goods on certain terms and conditions which contain warranties which apply for a certain period (**Express Warranties**), which are in addition to statutory consumer rights.

Statutory Rights

5. Part V Division 2 of the TPA implies certain warranties and conditions into consumer contracts (**implied warranties**). The implied warranties give consumers a basic guaranteed level of warranty protection for the goods and services they acquire. Such rights cannot be excluded, restricted or modified by suppliers.
6. On 13 July 2010, the *Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010* (**ACL Act**) received Royal Assent. The ACL Act completes the implementation of the Australian Consumer Law (**ACL**), and on 1 January 2011, will change the name of the TPA to the *Competition and Consumer Act 2010* (**CC Act**) which will include the ACL as a schedule. The ACL replaces the implied warranties under Part V Division 2 of the TPA with consumer

guarantees (**consumer guarantees**). Consumer guarantees operate in the same way as implied warranties – they give a basic guaranteed level of warranty protection to consumers and cannot be excluded or limited. For the purposes of this Undertaking, implied warranties and consumer guarantees will be referred to as statutory consumer rights when referring to both.

7. Under the implied warranties, suppliers selling goods to a consumer must:
 - a) give the consumer clear title to the goods;
 - b) supply goods that are of merchantable quality (taking into consideration the nature and price of the goods);
 - c) supply goods that are fit for the purpose for which they were supplied; and
 - d) supply goods that match the description or sample given to the consumer.
8. Under the consumer guarantees, suppliers will have largely the same obligations as exist under the implied warranties, with the following amendments:
 - a) The implied warranty of merchantable quality will be replaced with a consumer guarantee of acceptable quality; and
 - b) A new consumer guarantee that goods will comply with any associated express warranties will be introduced.
9. These statutory consumer rights apply to products manufactured by the supplier, as well as products which the supplier sells, but which are sourced from a third party. Aside from the right of clear title, the statutory consumer rights do not apply where the consumer acquires the goods through an auction.
10. If an implied warranty is breached by a supplier, the consumer is entitled to a remedy (and similarly in relation to a breach of a consumer guarantee from 1 January 2011). The type of remedy depends on the circumstances and the nature of the breach but may include a repair, replacement of goods or a refund. There may be circumstances where suppliers and consumers have different good faith views as to whether a consumer is entitled to a particular remedy in relation to a breach of a statutory consumer right.
11. Representations by a supplier that a consumer is not entitled to a remedy pursuant to the statutory consumer rights may contravene sections 52 and 53(g) of the TPA (and from 1 January 2011, sections 18 and 29(1)(m) of the ACL in relation to consumer guarantees). Section 52 of the TPA prohibits conduct that is misleading or deceptive or that is likely to mislead or deceive. Section 53(g) of the TPA prohibits the making of false or misleading representations concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

Conduct of Concern

12. On 25 June 2009, the ACCC informed Dell of its concerns that consumers may be misled or deceived by Dell's Terms and Conditions of Sale in relation to their rights concerning third party products, remedies in relation to non-standard products, and rights of return beyond two weeks after purchase. Shortly after 1 September 2009, Dell amended its Terms and Conditions of Sale and Support to address the ACCC's concerns, and the ACCC advised that it proposed to take no further action in relation to that issue.
13. In May 2010, the ACCC contacted Dell raising concerns that during the period from January 2008 to 3 May 2010:
 - a) information provided by Dell to its customers may have misled those customers about their rights under the implied warranties; and
 - b) on occasions, when consumers experienced problems with products acquired from Dell, Dell responded to their complaints in a manner which did not sufficiently include, or was not in accordance with, those consumers' rights under the implied warranties.
14. As a result, the ACCC was concerned that representations conveyed by Dell's terms and conditions, and its handling of customers' problems, contravened sections 52 and 53(g) of the TPA.
15. Dell acknowledges that on a number of occasions its customer support staff made representations to consumers who purchased products from Dell to the effect that:
 - a) the consumer was only entitled to a refund, replacement or credit of the purchase price for a product within 15 days of the product's invoice date, when that was not the case;
 - b) where that product developed a fault outside of Dell's Express Warranty period, the consumer was not entitled to any remedy for the product and would have to pay for any repair or replacement parts required to remedy the fault, when that was not always the case;
 - c) where that product developed a fault within Dell's Express Warranty period, the consumer was required to prepay, and assume the risk of all shipping and transportation charges to return the product to Dell for repair or replacement, when that was not always the case; and
 - d) where a third party product was faulty the consumer was only entitled to seek remedies directly from the third party manufacturer, when that was not the case.
16. Dell acknowledges that by making the representations identified in paragraph 15 above, Dell is likely to have contravened sections 52 and 53(g) of the TPA.
17. Following the ACCC's notification of its most recent concerns to Dell in May 2010, Dell has:
 - a) amended its Returns and Refund for Change of Mind Policy to make clear that it is a "change of mind" policy which permits consumers to return certain products within 15 days of the product's invoice date for

refund or replacement (less shipping charges), and is in addition to their statutory consumer rights;

- b) reviewed and amended its internal procedures and manuals to address the circumstances which led to customer support staff making the representations identified in paragraph 15;
 - c) implemented changes to internal procedures to more closely monitor customer interactions, to continually identify corrective actions required to improve the consumer complaints handling procedure and to implement those actions, so as to enhance Dell's customers' experience; and
 - d) undertaken further and revised training in statutory consumer rights for its customer support staff.
18. Dell wishes to address the ACCC's concerns and has offered this Undertaking to the ACCC in accordance with section 87B of the TPA.

COMMENCEMENT OF UNDERTAKINGS

19. This Undertaking commences when:
- a) the Undertaking is executed by Dell; and
 - b) the ACCC accepts the Undertaking so executed.
20. Upon commencement of this Undertaking, Dell undertakes to assume the obligations set out in paragraphs 21 to 32 below.

UNDERTAKINGS

21. Dell provides the following undertakings for the purposes of section 87B of the TPA.

Statutory Consumer Rights

22. Dell undertakes that for a period of 3 years from the commencement of this Undertaking, it will not, whether by itself, its directors, servants, agents or otherwise, in trade or commerce, in connection with the promotion, supply or possible supply of computer products, make any representation, whether express or implied, to consumers about their statutory consumer rights, including on its Website and in any advertising or promotional material that it publishes or disseminates, or causes to be published or disseminated, to the following effect:
- a) that a consumer is only entitled to a refund, replacement or credit of the purchase price for a product within a specified period of time, when this is not the case;
 - b) where a product develops a fault outside of Dell's Express Warranty period the consumer is not entitled to any remedy for the product and will

have to pay for any repair or replacement parts required to remedy the fault, when this is not the case;

- c) where a product develops a fault within Dell's Express Warranty period, the consumer is required to prepay, and assume the risk of all shipping and transportation charges to return the product to Dell for repair or replacement, when this is not the case; and
- d) where a consumer acquires a third party product from Dell which is faulty, the consumer is only entitled to seek remedies directly from the third party manufacturer.

Corrective Notices and Re-assessment program

- 23. Dell further undertakes that it will, within 14 days of the date of this Undertaking coming into effect, and again 14 days thereafter, publish a corrective notice in the form and terms of **Annexure A** to this Undertaking, subject only to such variations as may be agreed to by the ACCC in writing, in a weekend edition of The Australian newspaper and use its best endeavours to ensure that such notice:
 - a) is published within the first 10 pages of the general news section;
 - b) is of a size not less than 12cm x 10cm (or equivalent area); and
 - c) displays the body of the text in a minimum 9 point font with the heading in bold to be at least 2 point font size larger than the body of the text.
- 24. Dell further undertakes that it will, within 21 days of the date of this Undertaking coming into effect, cause to be published a corrective notice in the form and terms of **Annexure A** to this Undertaking, subject only to such variations as may be agreed to by the ACCC in writing, on its Website, and ensure that such notice:
 - a) is accessible by a prominent one-click link from the homepage of the Website;
 - b) is in searchable text format;
 - c) displays the body of the text in a minimum 9 point font with the heading in bold to be at least 2 point font size larger than the body of the text;
 - d) is at least 540 pixels wide by 500 pixels high; and
 - e) is maintained on the Website for a period of not less than 90 consecutive days.
- 25. Within 14 days of the publication of each of the corrective notices referred to in paragraphs 23 and 24 above (**the corrective notices**), Dell undertakes that it will, at its own expense, provide the ACCC with written evidence of its compliance with paragraphs 23 and 24 above.

26. Dell undertakes that it will at its own expense:
- a) within 7 days of the date of this Undertaking coming into effect and prior to the publication of the corrective notices:
 - (i) establish an email address, dellaustralia_warrantyassess@dell.com through which consumers who are responding to the corrective notices can contact Dell;
 - (ii) establish an 1800 telephone number, through which consumers who are responding to the corrective notices can contact Dell;
 - (iii) appoint a suitably qualified Contact Officer to deal with any correspondence received by Dell in response to the corrective notices; and
 - b) maintain the email address, telephone number and Contact Officer referred to in sub-paragraph 26(a) above, for a period that is not less than 120 days from the date of commencement of this Undertaking.
27. For each consumer who contacts Dell in response to the corrective notices Dell further undertakes to reassess and resolve each of their complaints in accordance with their statutory consumer rights.
28. Dell undertakes that it will, within 150 days of the date of the commencement of this Undertaking, provide to the ACCC an aggregated report of the matters raised by consumers who contact Dell in response to the corrective notices, including details of the steps taken by Dell to resolve those matters.
29. Dell further undertakes that it will, if requested to do so by the ACCC, within 180 days of the date of the commencement of this Undertaking, provide the ACCC with a report on a particular matter or matters, raised by a particular consumer or class of consumers who contacts Dell in response to the corrective notices.
30. For the avoidance of doubt, after the period referred to in subparagraph 26(b) above has elapsed, Dell will deal with consumers who contact Dell in response to the corrective notices in accordance with their rights under the ACL.

Notices to consumers

31. Dell further undertakes that it will, at its own expense:
- a) within 30 days of the date of this Undertaking coming into effect, for a period of three years, cause a copy of the notice in the form and terms of **Annexure B** to this Undertaking, subject only to such variations as may be agreed to by the ACCC in writing, including appropriate variations to be made after the implied warranties are replaced with consumer guarantees from 1 January 2011, and to incorporate voluntarily the text mentioned in subregulation 90(2), as prescribed in regulation 90(1)(c) of the *Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No 1)* and which is scheduled to commence on 1 January 2012, to be emailed to all direct purchasers of products from Dell through Dell's consumer and small and medium business channels at the same time as Dell emails the consumer with confirmation of the consumer's order/despatch of the order; and

- b) within 14 days of the date of this Undertaking coming into effect, post a link on the Website, in searchable text format, to a copy of the notice in **Annexure B** to this Undertaking, subject only to such variations as may be agreed to by the ACCC in writing, including appropriate variations to be made after the implied warranties are replaced with consumer guarantees from 1 January 2011, and to incorporate voluntarily the text mentioned in subregulation 90(2), as prescribed in regulation 90(1)(c) of the *Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No 1)* and which is scheduled to commence on 1 January 2012, and maintain that link for a period of three years on Dell's Terms and Conditions webpage. The link will be legible, titled "About Consumer Rights" and located directly below, and in the same sized font as the links to Dell's other online policies.

Compliance program and Customer Charter

- 32. Dell further undertakes that for the purposes of section 87B of the TPA it will, at its own expense:
 - a) upgrade its existing Trade Practices Compliance Program in accordance with the requirements set out in **Annexure C**, being a program designed to minimise Dell's risk of breaching its obligations under the statutory consumer rights provisions and prohibitions on misleading or deceptive conduct and false or misleading representations in the TPA, and from 1 January 2011, the ACL;
 - b) as part of the Trade Practices Compliance Program Dell will cause to be published on its Website, by 1 January 2011, a Customer Service Charter, including **Annexure B**, which states how consumers may initiate product complaints and how complaints are handled and resolved by Dell;
 - c) maintain and continue to implement the Trade Practices Compliance Program for a period of three years from the date of this Undertaking coming into effect; and
 - d) provide a copy of any documents required by the ACCC in accordance with **Annexure C**.

ACKNOWLEDGEMENTS

- 33. Dell acknowledges that:
 - a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
 - b) the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications;
 - c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and

- d) a summary of the ACCC Compliance Program Review Reports referred to in **Annexure C** to this Undertaking may be held with this Undertaking on the public register.

EXECUTED BY

Dell Australia Pty Ltd (A.C.N. 003 855 561)

in accordance with section 127(1) of the *Corporations Act* 2001

by authority of its directors:



Signature of Director



Signature of Director/Secretary

JOSEPH KREMER

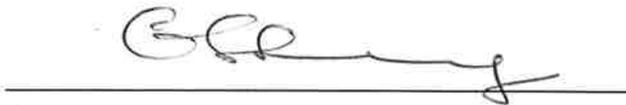
Name of Director (print)

JOHN EDGCOMBE

Name of Director/Secretary (print)

This 21st day of December 2010.

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



Graeme Julian Samuel
Chairperson

This 23rd day of December 2010.

ANNEXURE A

CORRECTIVE NOTICE

IMPLIED WARRANTY COMPLAINTS



Recent complaints to the Australian Competition and Consumer Commission regarding Dell

The Australian Competition and Consumer Commission (ACCC) has raised concerns with Dell regarding potentially misleading statements previously appearing on our website and made by our customer service support staff when dealing with consumer's statutory warranty rights under the *Trade Practices Act*.

The ACCC was concerned that certain of Dell's former terms and conditions and statements made by our customer support staff to particular consumers may have misled consumers to believe that:

- they did not have rights to seek a refund or replacement of products purchased from Dell beyond 15 days from the invoice date. This is incorrect.
- they had no right to seek a remedy for third party products which Dell supplied. This is incorrect.
- after the expiry of Dell's express warranty period, consumers were not entitled to any remedy and would have to pay for repairs to products, and associated shipping. This is incorrect. Depending upon the circumstances, consumer statutory rights may extend beyond the period of any express warranty.

Dell acknowledges that by making the representations referred to above, Dell is likely to have contravened ss52 and 53(g) of the *Trade Practices Act*.

If you believe you were denied a statutory consumer right, or did not pursue a warranty claim because you were misled by representations made by Dell, please contact Dell by email at dellaustralia_warrantyassess@dell.com or by phone on 1800 008 160 and your claim will be assessed by Dell.

Dell is committed to the observance of all laws and we strive to provide excellent customer service.

For further information on consumer rights visit www.consumerlaw.gov.au and www.accc.gov.au/consumerguarantees.



**Australian
Competition &
Consumer
Commission**

This notice was published at Dell's expense as a result of a section 87B Undertaking provided to the ACCC.

ANNEXURE B



About Consumer Rights

When you buy a product from Dell as a consumer, as well as the rights you have under Dell's terms and conditions (or 'express warranty'), you also have rights under law which cannot be denied to you by Dell. Dell customers are entitled to a remedy if products do not comply with these legal rights.

Prior to 1 January 2011, your legal rights are called 'implied rights', and they are:

- **Quality** – goods supplied by Dell must be of merchantable quality. That is, they must meet a level of quality and performance that would be reasonable to expect, given their price and description. For example, you might expect that a Dell laptop computer would have a higher level of quality and performance and last longer than a lower priced printer;
- **Description** – goods supplied by Dell must match any description provided by Dell, for example on our website;
- **Sample** – goods supplied by Dell must match any sample shown to you, for instance by a Dell salesperson who shows you the features of a particular laptop;
- **Purpose** – goods *and* services supplied to you by Dell must be fit for any purpose for which these types of goods or services are usually purchased, or any purpose you have made known to Dell. For example, if you have made it known when purchasing a Dell laptop that you would like it to play DVDs, the laptop we supply you should include a DVD drive;
- **Due care and skill** – services provided to you by Dell (such as repair services) must be provided with due care and skill. . For example, if you have paid Dell to repair your laptop's DVD drive, in the process the repairer should not fail to provide services with due care and skill and so cause other damage to the laptop;
- **Title** – a consumer who purchases a product from Dell must receive clear title to the product. For example, the product cannot have already been sold to someone else.

On 1 January 2011, the Australian Consumer Law comes into operation. As of 1 January 2011, our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

The guarantees are similar to implied rights, except:

- **Quality** – the implied warranty of merchantable quality is replaced with a consumer guarantee of acceptable quality. The test for acceptable quality is whether a reasonable consumer, fully aware of the state and condition of the goods, would find them:
 - safe, durable and free from defects;
 - acceptable in appearance and finish; and
 - fit for all the purposes for which goods of that kind are commonly supplied.This must take into account the nature and price of the goods, and any statements on packaging or labelling.
- **Express warranties** – Dell will be legally required to comply with the express warranty that is set out in its terms and conditions;
- **Reasonable time** – repair services provided by Dell must be provided within a reasonable time.

For further information on consumer rights visit www.consumerlaw.gov.au and www.accc.gov.au/consumerguarantees.

ANNEXURE C

COMPLIANCE PROGRAM

Dell will review and update its existing Trade Practices compliance program (**the Compliance Program**) to ensure compliance with each of the following requirements.

Interpretation

1. In this Annexure, **Relevant Provisions** means the provisions in sections 52 and 53(g) and Part V Division 2 and Part V Division 2A of the Trade Practices Act 1974 (**TPA**) and sections 18 and 29(1)(m) and Part 3-2 Division 1 and Part 5-4 Divisions 1 to 3 of the Australian Consumer Law (**ACL**).

Compliance officer

2. Within three months of the date of the Undertaking coming into effect Dell (or the Dell Group) will appoint a senior Dell employee with suitable qualifications or experience in corporate compliance as Compliance Officer with responsibility to develop, implement and maintain the Compliance Program (**the Compliance Officer**). The Compliance Officer will report directly to the Managing Director of Dell Australia Pty Ltd for this purpose.

Risk assessment

3. Since May 2010 Dell has been conducting a risk assessment (**Risk Assessment**) to:
 - a) identify the areas where Dell is at risk of breaching:
 - (i) sections 52 and 53(g) of the TPA;
 - (ii) its obligations under Part V Division 2 and Part V Division 2A of the TPA;
 - (iii) sections 18 and 29(1)(m) of the ACL from 1 January 2011; and
 - (iv) its obligations under Part 3-2 Division 1 and Part 5-4 Divisions 1 to 3 of the ACL from 1 January 2011;
 - b) assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Dell should they occur;
 - c) identify where there may be gaps in Dell's existing procedures for managing these risks; and
 - d) provide recommendations for action having regard to the assessment.
4. Dell will ensure the Risk Assessment is completed within six weeks of the date of this Undertaking coming into effect.

Compliance policy

5. Dell will, within 30 days of the date of this undertaking publish an updated policy (**Compliance Policy**) which is communicated in writing to all employees involved in the resolution of customer complaints. The Compliance Policy must contain:
 - a) a statement of **commitment** by Dell to comply with the TPA and ACL;
 - b) a direction to all **employees** involved in the resolution of consumer complaints to comply with all Dell processes in relation to the resolution of consumer complaints;
 - c) a direction to all **employees** to report any compliance related issues to the Compliance Officer;
 - d) a **guarantee** that employees or any other person who makes a report of the kind outlined in 5c) will not be prosecuted or disadvantaged in any way by reason of their complaint or report and that their complaint or report will be kept confidential and secure; and
 - e) a statement that Dell will take disciplinary action against any persons who are knowingly or recklessly concerned in a contravention of the TPA or the ACL and will not indemnify them.
6. Dell will provide a copy of the Compliance Policy to all new staff at the commencement of their employment with Dell.

Complaints Handling System

7. Dell's Compliance Officer must review and take all reasonable steps to ensure that its complaints handling system is in accordance with *AS ISO 10002-2006 Customer Satisfaction – Guidelines for complaints handling in organisations* though tailored to its own circumstances, and that consideration of customers' consumer statutory rights is embedded into its complaints handling system.
8. Dell will publish a Customer Service Charter on its website, outlining Dell's customer complaints processes including information about consumer statutory rights.

Reports to Board/senior management

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

Training

10. Dell will ensure that all directors, officers, employees, representatives and agents of Dell, whose duties could result in them being concerned with conduct that may contravene one or more of the Relevant Provisions, receive practical training regarding the Relevant Provisions no less than once annually. Dell must ensure that the training is conducted by either a

suitably qualified compliance professional or legal practitioner with expertise in trade practices law.

11. Dell will ensure that senior agents involved in the day to day resolution of customer complaints receive specific, targeted, detailed training regarding the Relevant Provisions no less than once quarterly.
12. Dell will ensure that all directors, officers, employees, representatives and agents of Dell, whose duties could result in them being concerned with conduct that may contravene the Relevant Provisions, receive practical trade practices training as part of their induction.
13. Dell will ensure that senior agents involved in the day to day resolution of customer complaints receive specific, targeted, high level training regarding the Relevant Provisions after their promotion to, or induction as, a senior agent.

Supply of Compliance Program documents to the ACCC

14. Dell shall, at its own expense, within 4 months of the date of this Undertaking coming into effect, cause to be produced and provided to the ACCC copies of each of the documents constituting the Compliance Program.

External Review

15. Dell 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) Scope of the Reviews – the Reviews should be broad and rigorous enough to provide Dell and the ACCC with a supportable verification that Dell has in place a program that complies with each of the requirements detailed in paragraphs 1 to 14 above and to provide the reports and opinions detailed in paragraph 16 below.
 - b) Independence of Reviewer – Dell 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 Dell;
 - iii. has not acted and does not act for Dell in any trade practices related matters;
 - iv. has not and does not act for or consult to Dell or provide other services on trade practices related matters other than Compliance Program reviewing; and
 - v. has no significant shareholding or other interests in Dell.
 - c) Evidence – Dell shall use its best endeavours to ensure that the Review is conducted on the basis that the reviewer has access to

all relevant sources of information in Dell's possession or control, including without limitation:

- i. enquiries of any officers, employees, representatives, agents and stakeholders of Dell;
- ii. Dell's records, including Dell's complaints register/reports and any documents relevant to Dell's training or inductions program; and
- iii. documents created by Dell's consultants and legal practitioners for use in the Dell Compliance Program.

Reporting

16. Dell shall use its best endeavours to ensure that the reviewer sets out the findings of the Reviews in two separate reports:
 - a) Dell Compliance Program Review Report (to be provided to Dell); and
 - b) ACCC Compliance Program Review Report (to be provided to the ACCC).
17. The Dell Compliance Program Review report will provide particular and specific information regarding the performance of the Compliance Program, including:
 - a) if, and to what extent, the Compliance Program complies with the elements detailed in paragraphs 1 to 15 above;
 - b) if, and to what extent, the Compliance Program adequately addresses the areas identified in the Risk Assessment;
 - c) if, and to what extent, the training is effective;
 - d) if, and to what extent, Dell's complaints handling system is effective;
 - e) if, and to what extent, Dell is able to provide confidentiality and security to employees who report compliance related issues;
 - f) recommendations for rectifying deficiencies that the Reviewer thinks are reasonably necessary to ensure that Dell maintains, and continues to implement the Compliance Program in accordance with the requirements of the undertaking.
18. The ACCC Compliance Program Review Report will provide particular and specific evidence regarding the scope of the Review and the effectiveness of the Compliance Program, including:
 - a) details of the evidence gathered and examined during the Review;
 - b) the name and relevant experience of the person appointed as Dell's Compliance Officer;
 - c) the Reviewer's opinion on whether Dell has in place a Compliance Program that complies with the requirements of the Undertaking;

- d) actions recommended by the Reviewer to ensure the continuing effectiveness of Dell's Compliance Program; and
 - e) any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.
 - f) confirmation that any actual and potential inadequacies in Dell's Compliance Program have been brought to the attention of the Compliance Officer and the Board;
 - g) confirmation that the Reviewer has revisited any actual and potential inadequacies in Dell's Compliance Program identified in any previous Company Compliance Program Review Report, and assessed how they have been addressed by Dell;
 - h) 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
 - i) any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.
19. Dell shall ensure that each Dell Compliance Program Review Report is completed and provided to Dell within one month of the completion of the Review.
20. Dell shall ensure that each ACCC Compliance Program Review Report is completed and provided to Dell within one month of the completion of the Review
21. Dell will cause the ACCC Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.
22. Dell will implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC that are reasonably necessary to ensure that Dell maintains, and continues to develop the Compliance Program elements in accordance with the requirements of this undertaking.
23. If requested by the ACCC, Dell shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program including, for example, the name and relevant qualifications of the independent reviewer.
24. In the event the ACCC review indicates that there are outstanding issues, Dell shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting ACCC Review Report to be provided to the ACCC.