

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission
given for the purposes of section 87B

by

Apple Pty Ltd ACN 002 510 054

Person giving the undertaking

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Apple Pty Ltd ACN 052 008 581 of Level 3, 20 Martin Place, Sydney, 2000, in the State of New South Wales (Apple) for the purposes of section 87B of the Competition and Consumer Act 2010 (Act).
2. Apple is a subsidiary of Apple Inc. and carries on business in Australia as an importer, distributor and supplier to consumers of Apple-branded computer equipment, portable media players, mobile phones, tablets and accessories (collectively, **Apple devices**).
3. Insofar as Apple imports products for sale in Australia, Apple is deemed to be a manufacturer of those products within the meaning of the Australian Consumer Law (ACL) (being Schedule 2 to the Act) where the manufacturer of those products does not have a place of business in Australia.

Background

ACCC concerns about Apple conduct

4. On 6 April 2017, the ACCC commenced litigation against Apple in the Federal Court of Australia (VID339/2017) alleging that Apple had at various times in the period from February 2015 to February 2016 made certain false and misleading representations to consumers about the availability of remedies for non-compliance with the consumer guarantees in Part 3-2 of the ACL.
5. In summary, the ACCC alleged that:
 - a. each of the alleged false and misleading representations arose against the backdrop of a consumer having had a component of an Apple device repaired or serviced by someone other than Apple or a service provider authorised by Apple (**Apple Authorised Service Provider**);
 - b. in these circumstances, Apple told consumers that Apple would not provide a remedy for the problem with their Apple devices;
 - c. in doing so, Apple relied upon the devices having been serviced or repaired by a party other than Apple or an Apple-Authorised Service Provider as the basis for its position;
 - d. Apple represented to the relevant consumers that they had no right to any remedy, whether under the consumer guarantee regime of the ACL or otherwise;
 - e. the mere fact that a device was, on an earlier occasion, repaired or serviced by someone other than Apple or an Apple-Authorised Service Provider did not, and could not of itself, excuse Apple from its obligations under the consumer guarantee regime.
6. The parties agreed to resolve the proceedings upon admissions made by Apple Inc. in the proceedings that it had engaged in false, misleading and/or deceptive conduct. The parties have agreed to submit consent orders that Apple Inc. pay a pecuniary penalty and a contribution to the ACCC's costs.
7. The ACCC has separately received complaints alleging that:
 - a. the provision by Apple of refurbished goods as replacements to remedy failures of goods supplied by Apple to comply with consumer guarantees may not be sufficient to meet the requirements of sections 261 and 263 of the ACL;
 - b. Apple may have refused to provide a refund to a consumer in circumstances where:
 - i. Apple had supplied a device to the consumer;

- ii. there had been a major failure with the Apple device; and
 - iii. the consumer requested a refund from Apple.
- c. in providing an estimated repair cost and requiring consumers to provide credit card details to Apple prior to sending an Apple device to Apple for remote repair without stating that no payment will be required if the repair is covered by the ACL, Apple may have led customers to believe that consumers must pay to have their devices repaired when the devices are outside of Apple's one-year express warranty period where in fact no payment would be required if the repair was required by the ACL.
8. Apple acknowledges that:
- a. a representation made to a consumer to the effect that they had no right to any remedy under the consumer guarantee regime of the ACL in respect of their Apple device would be false or misleading in breach of sections 18 and 29(1)(m) of the ACL if the consumer's Apple device had been repaired or serviced by a party other than Apple or an Apple Authorised Service Provider but such third party repair had not caused the Apple device to become of unacceptable quality for the purposes of section 54 of the ACL;
 - b. in order to comply with consumer guarantees under sections 261 and 263 of the ACL goods must be of the same type, and of similar value, in order to be provided as replacements under those provisions;
 - c. in the circumstances described in paragraph 6(b), the consumer would be entitled under Part 5-4 of the ACL to request a refund from Apple to remedy the major failure; and
 - d. by reason of the conduct described at paragraph 6(c), in certain circumstances Apple may have contravened sections 18 and 29(1)(m) of the ACL.
9. Apple has worked co-operatively with the ACCC to design the commitments set out in this Undertaking so as to address the ACCC's concerns.

Australian Consumer Law

10. The Australian Consumer Law (ACL) is contained in Schedule 2 to the Act.
11. Section 18 of the ACL provides that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.
12. Section 29(1)(m) of the ACL provides that a person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with promotion by any means of the supply or use of goods or services make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2).
13. Part 5-4 of the ACL provides for remedies available to consumers against suppliers or retailers when goods or services breach the consumer guarantees under Part 3-2 of the ACL.

Commencement of this undertaking

14. This undertaking comes into effect when:
- a. this undertaking is executed by Apple; and
 - b. this undertaking so executed is accepted by the ACCC (the commencement date).
15. Upon the commencement date, Apple undertakes to assume the obligations set out in Attachment A for the purposes of section 87B of the Act.
16. This undertaking ceases to have effect after a period of three years from the commencement date.


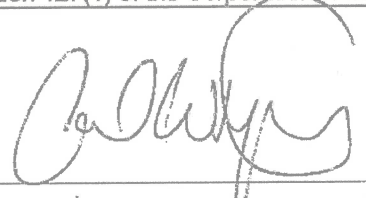
Acknowledgments

17. Apple 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 may, from time to time, make public reference to this undertaking, including in news media statements and in ACCC publications;

- c. the ACCC may make public reference to the information contained in the report provided by Apple as set out in Attachment A of this undertaking in the section titled 'Undertaking as to reporting', including in news media statements and in ACCC publications; and
- d. this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an undertaking

Executed by Apple Pty Ltd ACN 002 510 054 pursuant to section 127(1) of the *Corporations Act 2001* by:

| | |
|---|--|
|  |  |
| Signature of director | Signature of a director/company secretary |
| ANTHONY KING | PAUL WHITTINGHAM |
| Name of director (print) | Name of director/company secretary (print) |
| Date 18 JUNE 2018 | Date 18 JUNE 2018 |

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

21 June 2018

Date

and signed on behalf of the Commission:



ACCC
Chairman

21 June 2018

Date

Attachment A

1. Upon the commencement of this Undertaking, Apple undertakes for the purposes of section 87B of the Act to assume the obligations set out below.

Review of external and internal materials

2. Apple will, within 6 months of this Undertaking coming into effect, cause a comprehensive independent review to be undertaken of:
 - (a) publicly accessible materials on its websites and in its terms and conditions;
 - (b) internal policies, procedures and guidelines for AppleCare customer service staff related to customers' Australian Consumer Law rights;
 - (c) the relevant Australian specific repair and inspection guides and training materials used by Apple Australia staff or authorised non-Apple repairers in Australia; and
 - (d) a sample of the AppleCare customer contact database records for a fixed period to analyse application of policies by staff and identify potential improvements in record-keeping practices,

so as to ensure that it is clearly stated that Australian consumers' statutory rights under the ACL are in addition to the contractual rights under Apple's express warranties.

3. Apple will, within one month of this Undertaking coming into effect, include on each webpage on which Apple displays an estimated or actual out-of-warranty repair cost or requires a consumer to provide payment details in respect of a proposed repair of their Apple device a prominent disclaimer to the effect that no payment will be required by the consumer in respect of the repair of their Apple device if the consumer is entitled to have the Apple device repaired by Apple free of charge under the consumer guarantee regime of the ACL and that, in any case, no charge will be made for repairs without confirmation by the consumer that they agree to the actual charge for repairs being levied from their credit card for such repairs.

Empirical data verification

4. Apple will cause empirical data verification through random systematic checks of the effectiveness of Apple's ACL compliance and training program by means of:
 - (a) anonymous, random visits to Apple Retail Stores and calls to Apple's phone support line simulating product problems;
 - (b) inquiries of Apple staff during those visits and calls in relation to Apple supplied products to test:
 - (i) what remedies are available;
 - (ii) whether there is a choice of remedies if the consumer is unhappy with the remedy offered;
 - (iii) the interaction between voluntary Apple warranties and the ACL;

- (iv) what process must be undertaken to obtain a remedy;
 - (v) what proof of purchase is required; and
- (c) post facto checking of records of such visits to determine how the visit, diagnosis and remedy are being implemented in practice by staff.

Compliance training measures

5. Apple undertakes that it will, within a period of 3 months of this Undertaking coming into effect, enhance its existing ACL compliance training program through:
- (a) improved instructional design through:
 - (i) a review of requirements and learning objectives;
 - (ii) design of new content as needed;
 - (iii) creation of a single ACL compliance course with customized modules; and
 - (b) implementation of:
 - (i) increased frequency of face-to-face training so that each individual is more regularly personally trained with the aim of achieving face to face training for all staff at least annually;
 - (ii) custom online training platform;
 - (iii) student progression dashboard;
 - (iv) system and learning validation,

to seek to ensure that Apple staff are made aware of the obligations of Apple as supplier and manufacturer under the ACL outlined above;

6. Apple undertakes that it will within a period of 3-6 months of this Undertaking coming into effect deploy:
- (a) enhanced systems features including system generated reminder notification triggered in circumstances where staff are entering data into systems when dealing with problems with devices which may fall within the scope of remedies conferred by ACL and other directed guidance using simple and accessible language; and
 - (b) an internal ACL escalation team to support the retail and Authorised Apple Service Provider channels.

Provision of new devices for major failures

7. In circumstances where:
- (a) a consumer has purchased a good from Apple;
 - (b) that good is subject to a major failure within the meaning of the ACL;
 - (c) the consumer has exercised their right to reject the good under section 259 of the ACL; and

- (d) the consumer has made an election under s263(4) and has elected to receive a replacement good under section 263(4)(b) instead of a refund,

Apple will:

- (e) provide the consumer with a replacement good of same type and of similar value but where the unit may be a remanufactured good clearly disclose so; and
- (f) where the customer requests a new replacement good, and Apple has a new replacement good available, provide the consumer with a new replacement good.

Responsiveness to complaints

8. Apple will, when provided with data or information by the ACCC about complaints it has received regarding Apple, investigate any underlying cause of those complaints, provide a response to the ACCC within 20 business days and, where practicable, seek expeditiously to resolve those complaints directly with any affected consumers.