

Competition and Consumer Act 2010

Undertaking to the Australian Competition and Consumer Commission given under section 87B of the *Competition and Consumer Act 2010* (Cth)

by

Health Insurance Comparison Choosewell Pty Ltd ACN: 621 342 667

Person(s) giving the Undertaking

1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Health Insurance Comparison Choosewell Pty Ltd ACN 621 342 667 (**HICC**), for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**).

Background

2. HICC, a subsidiary of Compare Club Australia Pty Ltd, operates an online health insurance comparison service for consumers via its website www.compareclub.com.au. HICC's service compares certain health insurance services. Specifically, the services provided by HICC's partnered health insurance providers.
3. HICC engages with individual consumers through the following methods:
 - 3.1. a referral from a third-party lead generator engaged by HICC; and
 - 3.2. consumers contacting HICC via its website.
4. HICC engages third party lead generators to initiate contact with consumers to ascertain whether the consumer is interested in obtaining private health insurance or switching providers. If a consumer indicates that they are interested, the lead generator refers the consumer to HICC by either transferring the consumer directly to HICC via telephone or providing HICC with the consumer's contact details to enable HICC to call the consumer directly.
5. Referrals from lead generators are typically the result of unsolicited telephone calls to consumers where the consumer has not invited the lead generator or HICC to make the telephone call for the purposes of entering into negotiations relating to purchasing health insurance services.
6. Following a referral from a lead generator, HICC enters into negotiations with the consumer with a view to making an agreement for the supply of health insurance services to the consumer by a partnered insurance provider. After the consumer agrees to enter into an agreement on the telephone, HICC sends a 'welcome email' to the consumer with certain information, including information about:
 - 6.1. the consumer's private health insurance policy and member number;
 - 6.2. the policy start date; and
 - 6.3. the relevant partnered insurance provider.
7. HICC also notifies the relevant partnered insurance provider of the agreement negotiated with the consumer.

Conduct of concern

8. From at least October 2014 until December 2021 HICC, acting as a dealer, entered into negotiations with consumers via unsolicited telephone calls with a view to making agreements for the supply of health insurance services.
9. Before making the agreements, HICC did not inform consumers about:
 - 9.1. their statutory right to terminate the agreement during the relevant termination period in the ACL;
 - 9.2. the way in which they could exercise their right to terminate the agreement; and
 - 9.3. that for a period of 10 business days after the agreement is made, the private health insurance supplier must not require payment, accept payment or supply health insurance services.
10. HICC did not provide consumers with this information over the telephone and this information, in whole or in part, was not subsequently provided in writing.
11. The ACCC considers that HICC's conduct described at paragraphs 8 to 10 above contravenes section 76 of the ACL.

Admissions, Acknowledgements and Resolution

12. In response to the ACCC's concerns, HICC admits its conduct described in paragraphs 8 to 10 above contravened section 76 of the ACL, including that:
 - 12.1. it entered into unsolicited consumer agreements with consumers via the telephone;
 - 12.2. before entering into such agreements, it failed to inform consumers over the telephone of their right to terminate the agreement during the termination period, the manner in which consumers could exercise their right to terminate the agreement, and the fact that, for a period of 10 business days after the agreement is made the relevant health insurance provider must not require or accept payment or supply the services; and
 - 12.3. after entering into an agreement, it failed to inform consumers of the above information in writing in a manner that complies with the Regulations.
13. HICC has offered this Undertaking to resolve the ACCC's concerns.
14. HICC has also agreed to the payment of an Infringement Notice, with a penalty of \$13,320 issued by the ACCC under section 134A of the CCA for the alleged contravention of section 76(c) of the ACL.

Commencement of this Undertaking

15. This Undertaking comes into effect when:
 - 15.1. this Undertaking is executed by HICC; and
 - 15.2. this Undertaking so executed is accepted by the ACCC (**the Commencement Date**).
16. This Undertaking has effect for three years from the Commencement Date (**the Term**).
17. Upon the commencement of this Undertaking HICC undertakes to assume the obligations set out in paragraphs 18 and 19 for the purposes of section 87B of the CCA.

Undertaking


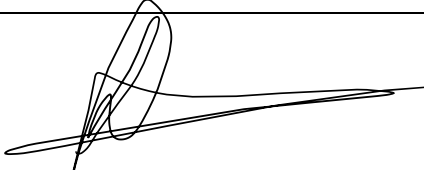


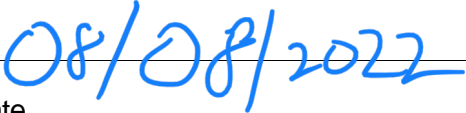
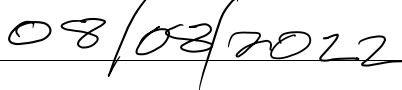
18. HICC undertakes to ensure that:
 - 18.1. it will not make an unsolicited consumer agreement with a person unless, before the agreement is made, the person is given information as to:
 - 18.1.1. the person's right to terminate the agreement during the termination period; and
 - 18.1.2. the way in which the person may exercise that right; and
 - 18.1.3. such other matters as are prescribed by the Competition Regulations, including that for a period of 10 business days after the agreement is made, the health insurance provider must not require payment, accept payment or supply health insurance services;
 - 18.2. it will provide the above information in writing following the telephone call in a way which complies with the ACL and the regulations; and
 - 18.3. it will develop a process to notify the relevant health insurance provider when an agreement is an unsolicited consumer agreement.
19. HICC undertakes that, within three months of the Commencement Date and at its own expense, it will:
 - 19.1. establish and implement a Competition and Consumer Compliance Program (**the Compliance Program**) in accordance with the requirements set out in "Annexure A";
 - 19.2. maintain and continue to implement the Compliance Program for a period of three years from the date of this Undertaking coming into effect; and
 - 19.3. provide, at its own expense, a copy of any documents required by the ACCC in accordance with this Undertaking, including Annexure A.

Acknowledgments

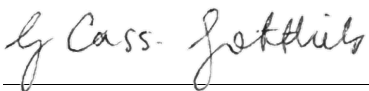
20. HICC acknowledges that:
 - 20.1. the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
 - 20.2. the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications;
 - 20.3. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
 - 20.4. a summary of the ACCC Compliance Program review reports referred to in Annexure A of this Undertaking may be held with this Undertaking in the public register.

Executed as an Undertaking

Executed by Health Insurance Comparison Choosewell Pty Ltd ACN: 621 342 667 pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of a director/company secretary (delete as appropriate, or entire column if sole director company)
	
Name of director (print)	Name of director/company secretary (print)
	
Date	Date

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



Gina Cass-Gottlieb

Chair

Date 5 September 2022

Annexure A: Australian Consumer Law Compliance Program

Health Insurance Comparison Choosewell Pty Ltd (**HICC**) will establish a Competition and Consumer Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within three months of the Undertaking coming into effect, HICC will appoint a director or a senior manager of the business to be responsible for the development, implementation and maintenance of the Compliance Program (**the Compliance Officer**).
2. Within three months of the Undertaking coming into effect, HICC will appoint a suitably qualified, internal or external, compliance professional with expertise in competition and consumer law (**the Compliance Advisor**)

Compliance Officer Training

3. Within three months of the Undertaking coming into effect, HICC will ensure that the Compliance Officer attends practical training focusing on Part 3-2, Division 2 – Unsolicited Consumer Agreements, of the Australian Consumer Law (**the ACL**).
4. HICC will ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law.

Staff Training

5. HICC will cause all employees of HICC whose duties could result in them being concerned with conduct that may contravene Part 3-2, Division 2 – Unsolicited Consumer Agreements of the ACL to receive regular (at least once per year) training administered by the Compliance Officer (once trained) or a qualified compliance professional or legal practitioner with expertise in competition and consumer law, that focuses on unsolicited consumer agreement provisions in Part 3-2, Division 2 – Unsolicited Consumer Agreements of the ACL.
6. HICC will cause all new employees of HICC whose duties could result in them being concerned with conduct that may contravene Part 3-2, Division 2 – Unsolicited Consumer Agreements of the ACL to receive induction training as well as regular (at least once per year) training administered by the Compliance Officer (once trained) or a qualified compliance professional or legal practitioner with expertise in competition and consumer law, that focuses on unsolicited consumer agreement provisions in Part 3-2, Division 2 – Unsolicited Consumer Agreements of the ACL.

Risk Assessment Reports

7. HICC will instruct the Compliance Advisor to conduct a competition and consumer law risk assessment within three months of being appointed as the Compliance Advisor (**Risk Assessment**).
8. HICC will use its best endeavours to ensure that the Risk Assessment covers the following matters, to be recorded in a written report (**Risk Assessment Report**):

- 8.1. identifies area where HICC is at risk of breaching Part 3-2, Division 2 – Unsolicited Consumer Agreements of the ACL;
- 8.2. assess the likelihood of these risks occurring;
- 8.3. identifies where there may be gaps in HICC’s existing procedures for managing these risks; and
- 8.4. provides recommendation for any action to be taken by HICC having regard to the above assessment.

Reports to Directors/Governing Body

9. HICC will ensure that the Compliance Officer reports to the HICC’s director(s) or governing body every six months on the continuing effectiveness of the Compliance Program.

Compliance Review

10. HICC will, at its own expense, cause an annual review of the Compliance Program (**the Review**) to be carried out in accordance with each of the following requirements:
 - 10.1. **Scope of Review** – the Review should be broad and rigorous enough to provide HICC and the ACCC with:
 - 10.1.1. verification that HICC has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of HICC; and
 - 10.1.2. the Compliance Report detailed at paragraph 11 below.
 - 10.2. **Independent Reviewer** – HICC will ensure that each Review is carried out by a suitably qualified, independent compliance professional with expertise in competition and consumer law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
 - 10.2.1. did not design or implement the Compliance Program;
 - 10.2.2. is not a present or past staff member or director of HICC; and
 - 10.2.3. has no significant shareholding or other interests in HICC.
 - 10.3. **Evidence** – HICC will use its best endeavours to ensure that each Review is conducted on the basis that the Reviewer has access to all relevant sources of information in HICC’s possession or control, including without limitation:
 - 10.3.1. the ability to make enquiries of any officers, employees, representatives, and agents of HICC;
 - 10.3.2. documents relating to the Risk Assessment, including the Risk Assessment Report;
 - 10.3.3. documents relating to HICC’s Compliance Program, including documents relevant to HICC’s Staff Training; and
 - 10.3.4. any reports made by the Compliance Officer to HICC’s governing body regarding HICC’s Compliance Program.

- 10.4. HICC will ensure that a Review is completed within one year of this Undertaking coming into effect and that a subsequent review is completed within each year for three years.

Compliance Reports

11. HICC will use its best endeavours to ensure that within seven days of a Review, the Reviewer includes the following findings of the Review in a report to HICC (**the Compliance Report**):
- 11.1. whether the Compliance Program of HICC includes all the elements detailed in paragraphs 1-6 above, and if not, what elements need to be included or further developed;
 - 11.2. whether the Compliance Program adequately covers the parties and areas identified in the Risk Assessment, and if not, what needs to be further addressed;
 - 11.3. whether the Staff Training is effective, and if not, what aspects need to be further developed; and
 - 11.4. whether there are any material deficiencies in HICC's Compliance Program, or whether there are or have been instances of material non-compliance with the Compliance Program (**Material Failure**), and if so, recommendations for rectifying the Material Failure/s¹.

HICC Response to Compliance Reports

12. HICC will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:
- 12.1. provides the Compliance Report to the governing body of HICC;
 - 12.2. where a Material Failure has been identified by the Reviewer in the Compliance Report, provides a report to HICC's governing body identifying how HICC can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure.
13. HICC will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.

Reporting Material Failures to the ACCC

14. Where a Material Failure has been identified by the Reviewer in the Compliance Report, HICC will:
- 14.1. provide a copy of that Compliance Report to the ACCC within seven days of HICC's governing body receiving the Compliance Report; and
 - 14.2. inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or

¹ Material Failure means a failure, that is non-trivial and which is ongoing or continued for a significant period of time, to:

- Incorporate a requirement of the Undertaking in the design of the Compliance Program, for example if a Complaints Handling System did not provide any mechanism for responding to complaints; or
- Comply with a fundamental obligation in the implementation of the Compliance Program, for example, if no Staff Training has been conducted within the Annual Review period

- 14.3. otherwise outline the steps HICC proposes to take to implement the recommendations and will then inform the ACCC once those steps have been implemented.

Provision of Compliance Program documents to the ACCC

15. HICC will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than 5 years – being the number of years compliance training is required and an additional 2 years following that period.
16. If requested by the ACCC during the period of 5 years - being the number of years compliance training is required and an additional 2 years following that period, HICC will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:
 - 16.1. the Risk Assessment Report;
 - 16.2. Staff Training materials;
 - 16.3. all Compliance Reports that have been completed at the time of the request; and
 - 16.4. copies of the reports to the governing body referred to in paragraph 11.

ACCC Recommendations

17. HICC will implement promptly and with due diligence any recommendations that the ACCC may make that the ACCC deems reasonably necessary to ensure that HICC maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
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