

## 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

Wiggle Limited (UK Company Number 02667809).

### Person giving the Undertaking

1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Wiggle Limited (**Wiggle**) for the purposes of section 87B of the Competition and Consumer Act 2010 (CCA).

### Background

2. Wiggle is a private company, with operating facilities in the United Kingdom.
3. Wiggle is an online retailer that supplies sporting equipment, clothing, accessories and sports events.
4. Wiggle supplies goods to Australian consumers via the [www.wiggle.com.au](http://www.wiggle.com.au) website.

### Australian Consumer Law

5. The Australian Consumer Law (ACL) in Schedule 2 to the CCA provides consumers with a number of statutory guarantees for the goods and services supplied to them (the **Consumer Guarantees**). Consumer Guarantees cannot be excluded, restricted or modified.
6. Consumers who are supplied with goods and services that fail to meet the Consumer Guarantees are entitled to remedies under the ACL against the supplier of the goods or services. The remedy to which the consumer is entitled depends on whether the failure is major or minor. Where a failure of a good is major, the consumer may choose to receive a refund, repair or replacement.
7. Representations by a supplier that purport to limit or exclude remedies available under the ACL may contravene the ACL.
8. Section 18 of the ACL provides that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or that is likely to mislead or deceive.
9. Section 29(1)(m) of the ACL provides that a person must not, in trade or commerce, make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee or remedy (including a Consumer Guarantee under the ACL).

### Conduct of concern

10. In the period from at least January 2018 to August 2018, Wiggle, in trade or commerce, or in connection with the promotion, supply or possible supply of its goods

to Australian consumers, received complaints from Australian consumers who referred to and attempted to invoke their ACL rights.

11. In response to these complaints, Wiggle made representations to the effect that:
  - 11.1. Wiggle is not subject to the ACL;
  - 11.2. The consumer needed to contact the manufacturer rather than Wiggle in relation to a request for a refund or replacement of goods; and
  - 11.3. Wiggle would not consider a requested refund if the product had been used.
12. From at least 29 June 2018 until 9 July 2018, Wiggle, in trade or commerce, or in connection with the promotion, supply or possible supply of its goods to Australian consumers, made representations on its website ([www.wiggle.com.au](http://www.wiggle.com.au)) that:
  - 12.1. "You are entitled to returns as per UK Consumer Law"; and
  - 12.2. "Wiggle Terms and Conditions shall be governed by and construed in accordance with English Law. Disputes arising in connection with these Terms shall be subject to the exclusive jurisdiction of the English courts."
13. The ACCC considers that by engaging in the conduct in paragraphs 11 and 12, Wiggle has:
  - 13.1. engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of section 18 of the ACL, and
  - 13.2. in trade or commerce, in connection with the supply or possible supply of services or in connection with the promotion by any means of the supply or use of goods or services, made false or misleading representations concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a Consumer Guarantee under the ACL) in contravention of section 29(1)(m) of the ACL.

### **Wiggle's response**

14. In response to the ACCC's investigation, Wiggle has:
  - 14.1. Acknowledged that the conduct described in paragraphs 11 and 12 is likely to have contravened sections 18 and 29(1)(m) of the ACL.
  - 14.2. Indicated that it is prepared to publicly commit to take the measures outlined in paragraph 18, by way of this Undertaking;
  - 14.3. Indicated that it is prepared to pay an infringement notice in the amount of \$12,600, issued by the ACCC under s.134A of the ACL for an alleged contravention of s.29(1)(m).

### **Commencement of this Undertaking**

15. This Undertaking comes into effect when it is executed by Wiggle and accepted by the ACCC (the **Commencement Date**).
16. This undertaking has effect for three (3) years after the Commencement Date (the **Term**).

17. Upon the commencement of this Undertaking, Wiggle undertakes to assume the obligations set out in paragraph 18 for the purposes of section 87B of the CCA.

### **Undertaking**

18. Wiggle undertakes that it will:
  - 18.1. Not make false or misleading representations to Australian consumers regarding their Consumer Guarantee rights under the ACL;
  - 18.2. Establish and implement a Competition and Consumer Compliance Program (**Compliance Program**) in accordance with the requirements set out in Annexure A, being a program designed to minimise Wiggle's risk of future breaches of sections 18 and 29(1)(m) of the ACL and to ensure its awareness of the responsibilities and obligations in relation to the requirements of sections 18 and 29(1)(m) of the ACL;
  - 18.3. Maintain and continue to implement the Compliance Program for a period of three years from the date of this Undertaking coming into effect, and
  - 18.4. Provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure A.

### **Acknowledgments**

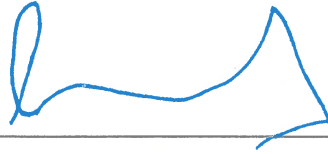
19. Wiggle acknowledges that:
  - 19.1. The ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
  - 19.2. The ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications;
  - 19.3. This Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct, and
  - 19.4. 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 Wiggle Limited (UK Company Number 02667809) by:



Signature of director



Signature of a director/~~company~~  
~~secretary (delete as appropriate, or~~  
~~entire column if sole director company).~~

NICHOLAS GRESHAM

Name of director (print)

WILL KERNAN

Name of director/~~company~~ secretary  
(print)

Date

28/11/18

Date

21/11/18

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

11/12/18

Date

and signed on behalf of the Commission:



Chair

11/12/18

Date

## **Annexure A: Australian Consumer Law Compliance Program**

Wiggle will establish a Compliance Program that complies with each of the following requirements:

### **Appointment**

1. Within one month of the Commencement Date, Wiggle will appoint a director or senior manager of the business with suitable qualifications or experience in corporate compliance to be responsible for the effective development, implementation and maintenance of the Compliance Program (the **Compliance Officer**).
2. Within two months of the Commencement Date, Wiggle will appoint a suitably qualified external compliance professional or legal practitioner with expertise in the Australian Consumer Law (ACL) (the **Compliance Advisor**).

### **Compliance Policy**

3. Within three months of the Commencement Date, Wiggle will issue a policy statement outlining Wiggle's commitment to compliance with the ACL (the **Compliance Policy**).
4. Wiggle will ensure that the Compliance Policy contains:
  - 4.1. A statement of commitment to compliance with the ACL;
  - 4.2. An outline of how the commitment to ACL compliance will be realised by Wiggle;
  - 4.3. A requirement for all staff to report any Compliance Policy related issues and compliance concerns to the Compliance Officer;
  - 4.4. A commitment that whistleblowers with compliance concerns will not be prosecuted or disadvantaged in any way, and that their reports will be kept confidential and secure; and
  - 4.5. A clear statement that Wiggle will take action internally against any person who is knowingly or recklessly concerned in a contravention of the ACL, and will not indemnify them in the event of any court proceedings in respect of that contravention.
5. Wiggle will take reasonable steps to ensure that its directors, officers and employees are made aware of the Compliance Policy.

### **Staff Training**

6. Wiggle will cause its directors, officers and employees whose duties could result in them being concerned with conduct that may contravene sections 18 and 29(1)(m) of the ACL to receive computer-based training overseen by the Compliance Advisor.
7. Wiggle will take reasonable steps to ensure that awareness of the ACL forms part of the induction of all new directors, officers and employees whose duties could result in them being concerned with conduct that may contravene sections 18 and 29(1)(m) of the ACL.

### **Complaints Handling System**

8. Within three months of the Commencement Date, Wiggle will develop procedures, or enhance existing procedures, for recording, storing and responding to ACL-related complaints (**Complaints Handling System**).
9. Wiggle will take reasonable steps to ensure that its staff and customers are aware of the Complaints Handling System.

### **Compliance and Risk Review**

10. Wiggle will ensure that the Compliance Officer reports to senior management on the continuing effectiveness of the Compliance Program on an annual basis (**Compliance Reviews**).
11. Wiggle will ensure that within six months of the Commencement Date, the Compliance Officer will conduct an ACL risk review with the assistance of the Compliance Advisor (**Risk Review**), which sets out in a written report:
  - 11.1. The areas of Wiggle's business that are at risk of contravening sections 18 or 29(1)(m) of the ACL;
  - 11.2. The procedures put in place by Wiggle to minimise the risk of it contravening sections 18 or 29(1)(m) of the ACL;
  - 11.3. Any material gaps in Wiggle's existing procedures for managing these risks; and
  - 11.4. Recommendations of actions to be taken to address these risks.
12. Wiggle will implement any reasonable and appropriate recommendations made by the Risk Review as soon as is reasonably practicable.

### **Provision of Compliance Program documents to the ACCC**

13. Wiggle will maintain a record of, and store, all documents relating to and constituting the Compliance Program for a period of not less than three years.
14. If requested by the ACCC during the period of the Undertaking, Wiggle will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:
  - 14.1. The Compliance Policy;
  - 14.2. A written statement or certification from the Compliance Advisor who conducted the training referred to in paragraph 6, verifying that such training has occurred;
  - 14.3. An outline of the Complaints Handling System;
  - 14.4. The Compliance Review(s);
  - 14.5. The Risk Review.