

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

Woolworths Group Ltd ACN 000 014 675

1. Person giving this Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Woolworths Group Ltd ACN 000 014 675, trading as BIG W (**BIG W**) of 1 Woolworths Way, Bella Vista, NSW, 2153, for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

2. Background

Big W

- 2.1 BIG W is a trading division of Woolworths Group Limited, comprising 183 BIG W department stores throughout Australia. BIG W stores sell a range of general merchandise products, including Dyson branded products.

Australian Consumer Law

- 2.2 The Australian Consumer Law (**ACL**) contained in Schedule 2 to the Act contains statutory guarantees which provide consumers with a guaranteed level of protection for goods and services they purchase within Australia (**Consumer Guarantees**). Consumers who are supplied with goods or services that fail to meet the Consumer Guarantees are entitled to certain remedies under the ACL, including a repair, replacement or refund.

- 2.3 The Consumer Guarantees cannot be excluded, restricted or modified. Statements that purport to limit or exclude relevant remedies available under the ACL, including statements such as "we do not offer refunds", may mislead consumers about their rights and contravene the ACL.

Conduct of concern

- 2.4 The ACCC has concerns that, in the period from at least 30 December 2016 to 30 April 2018, BIG W made statements to consumers who contacted Big W representatives in relation to faults with Dyson branded products purchased from BIG W to the effect that consumers must deal directly with the manufacturer of the product, Dyson, to obtain a remedy if more than 14 days had passed since the Dyson branded product was purchased from BIG W.
- 2.5 The ACCC considers that, by reason of the conduct described in paragraph 2.4 above, BIG W has engaged in conduct that may have been false or misleading in relation to the application of the Consumer Guarantees.

3. BIG W's response

- 3.1 BIG W has cooperated with the ACCC and responded to the ACCC's inquiries.
- 3.2 BIG W acknowledges that the alleged conduct outlined in paragraph 2.4 above may have misled consumers about their rights in connection with the Consumer Guarantees and in these circumstances BIG W may have made false or misleading representations in contravention of section 29(1)(m) of the ACL and contrary to BIG W's policy during this period.
- 3.3 In addition, to address these issues BIG W has offered this Undertaking to the ACCC.

4. Commencement and terms of this Undertaking

- 4.1 This Undertaking comes into effect when:
 - a. this Undertaking is executed by BIG W; and
 - b. the Undertaking so executed is accepted by the ACCC (the **Commencement Date**).
- 4.2 The Undertaking has effect for three (3) years after the Commencement Date (the **Term**).
- 4.3 Upon the Commencement Date, BIG W undertakes to assume the obligations set out in paragraph 5 below, for the purposes of section 87B of the Act.

5. Undertakings

- 5.1 BIG W undertakes that it will:
 - a. implement the consumer redress measures set out in Part 1 of Annexure A of this Undertaking; and
 - b. establish and implement the compliance actions in accordance with Part 2 of Annexure A (**Compliance Program**), being a program designed to mitigate BIG W's risk of future possible contraventions of section 29(1)(m) of the ACL.

6. Acknowledgements

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

7. Execution

Executed by Woolworths Group Limited ACN 000 014 675 by its authorised signatory:



Signature

William Reid, Chief Legal Officer, Woolworths Group Limited.

Name of authorised signatory

8 October 2019

Date

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

.....

Date

and signed on behalf of the Australian Competition and Consumer Commission by:



Chair

15/10/19

Date

Annexure A

Part 1 – Consumer redress

- 1.1 BIG W undertakes that within 30 days of the Commencement Date it will publish the following banner for a period of 90 consecutive days:
- on the top third of its internet home page www.bigw.com.au;
 - as, at least, an A4 sized sign in a prominent position on the customer service desk in each BIG W store:

"If you purchased a product from BIG W (including a Dyson branded product) and believe the item to be faulty please bring that item into a BIG W store along with your proof of purchase to receive a refund, repair or replacement, consistent with the Consumer Guarantees rights under the Australian Consumer Law."

- 1.2 BIG W undertakes that within 30 days of the Commencement Date it will publish for a period of 90 consecutive days on the top third of its "Appliances" page of the BIG W website, being <https://www.bigw.com.au/home/appliances/c/6519/>, the following banner:

"If you purchased an electrical product (including a Dyson branded product) from BIG W and believe the item to be faulty please bring that item into a BIG W store along with your proof of purchase to receive a refund, repair or replacement, consistent with the Consumer Guarantees rights under the Australian Consumer Law."

- 1.3 BIG W undertakes that within 30 days of the Commencement Date it will create an 'Australian Consumer Law' webpage that includes an easy to read explanation of a consumer's rights under the ACL, including an explanation of sections 54 and 259 of the ACL. BIG W will publish the 'Australian Consumer Law' webpage for a period of not less than 90 consecutive days.

- 1.4 BIG W undertakes that upon publishing the 'Australian Consumer Law' webpage, referred to in this Part 1, paragraph 1.3, above, it will also publish a hyperlink to the 'Australian Consumer Law' webpage in a prominent position on BIG W's internet homepage that includes the words, "Get to know your legal rights as a BIG W customer".

Part 2 – Compliance program

Compliance personnel

- 2.1 During the Term, BIG W will ensure that it maintains:
- a dedicated "Customer Care and Compliance Manager" with suitable qualifications and experience in corporate compliance; and
 - a "National Store Compliance Manager" to implement corporate compliance at store level and work cooperatively with the "Customer Care and Compliance Manager" (together, **Compliance Personnel**) .

Both of these roles have recently been created by BIG W as a direct response to the issues raised by this Undertaking.

- 2.2 BIG W will instruct the Compliance Personnel to oversee BIG W's compliance with the Undertaking and the ACL with input from other staff and/or legal representatives.

Compliance program review

- 2.3 Within six (6) months of the Commencement Date BIG W undertakes that it will complete a comprehensive review of BIG W's ACL Compliance Program, having regard to AS ISO 19600:2015 (Compliance management systems – Guidelines), and make any changes necessary to minimise BIG W's risk of engaging in conduct likely to contravene section 29(1)(m) of the ACL, in particular based on appropriate consideration of whether:
- consumer's rights under, and arising from, the Consumer Guarantees provisions of the ACL are clearly represented in all relevant systems, policies, procedures and practices;
 - any representations made by BIG W, including in its systems, policies, procedures and practices, are compliant with the ACL; and
 - reasonable steps have been taken to make consumers aware of any lawful remedies they are entitled to arising from the ACL and are not denied any of those remedies.

Complaints handling system

- 2.4 Within six (6) months of the Commencement Date, BIG W undertakes to complete a review of BIG W's customer Complaints Handling System to ensure that it has suitable processes and procedures in place for identifying, recording and responding to complaints made by BIG W customers about requests for remedies in accordance with the Consumer Guarantees provisions of the ACL.

Whistle-blower protection

- 2.5 BIG W will incorporate or update, as the case may be, its whistleblower protection policy to reflect the changes to the whistleblower provisions in the *Corporations Act 2001 (Cth)* and will implement this policy within four (4) months of the Commencement Date.
- 2.6 BIG W will take reasonable steps to ensure that staff know and understand the new whistleblower protection policy.

Staff training

- 2.7 Within six (6) months of the Commencement Date, BIG W undertakes to complete a review of, and where appropriate update, BIG W's existing staff ACL training as it relates to the Consumer Guarantees provisions of the ACL.
- 2.8 Within six (6) months of completing the review identified in this Part 2, paragraph 2.7 BIG W undertakes to ensure ACL compliance training relating to the Consumer Guarantees provisions of the ACL is provided to all BIG W staff involved in the handling or supervising of customer claims (including front of counter sales staff) for remedies under the Consumer Guarantees provisions of the ACL.
- 2.9 Within six (6) months of completing the ACL compliance training identified in this Part 2, paragraph 2.8, BIG W will, and will every twelve (12) months thereafter during the Term, carry out random staff audits in order to evaluate and continuously improve the knowledge and understanding of BIG W staff involved in the handling or supervising of customer claims (including front of counter sales staff) for remedies under the Consumer Guarantees provisions of the ACL.

BIG W policies and procedures

- 2.10 Within six (6) months of the Commencement Date, BIG W undertakes to complete a comprehensive review of its policies and procedures relating to its treatment of customer claims for remedies under the Consumer Guarantees provisions of the ACL in order to ensure that BIG W is compliant with the Consumer Guarantees provisions of the ACL.

Reports to Board/Senior Management

- 2.11 BIG W will ensure that a report prepared by the Compliance Personnel, with input from other staff and/or legal representatives, is provided to the Board and/or senior management every twelve (12) months, during the Term of this Undertaking, on the steps taken to comply with this Undertaking and the continued effectiveness of the Compliance Program in Annexure A, Part 2 to this Undertaking.

Compliance Review

- 2.12 BIG W will, at its own expense, cause a comprehensive annual review of the Compliance Program during the Term (the **Review**) to be carried out in accordance with each of the following requirements:
- a. Scope of Review – the Review should be broad and rigorous enough to provide BIG W and the ACCC with:
 - i. a verification that BIG W has in place a Compliance Program that complies with each of the requirements detailed in this Part 2, paragraphs 2.1 to 2.10 inclusive above; and
 - ii. the Compliance Reports detailed in this Part 2, paragraphs 2.13 to 2.14 below.
 - b. Independent Reviewer – BIG W will ensure that each Review is carried out by a suitably qualified, independent compliance professional or legal practitioner with expertise in competition and consumer 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 BIG W or Woolworths Group Limited and related bodies corporate;
 - iii. does not currently act for, or consult to, Big W or Woolworths Group Limited in any competition and consumer law related matters, other than performing Reviews under this Undertaking;
 - iv. has not acted for, or consulted to, Big W or Woolworths Group Limited in any competition and consumer law related matters in the two years prior to the Commencement Date;
 - v. is subject to professional rules of conduct that can be enforced by a professional body; and
 - vi. has no significant shareholding or other interests in Woolworths Group Limited.
- c. Evidence – BIG W 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 BIG W's possession or control, including without limitation:
- i. the ability to make enquiries of any officers, employees, representatives and agents of BIG W;
 - ii. documents relating to BIG W's Compliance Program, including documents relevant to BIG W's compliance policy, Complaints Handling System, staff training and induction; and
 - iii. any reports made by the Compliance Personnel to the Board and/or senior management regarding BIG W's Compliance Program.
- d. BIG W will ensure that a Review is completed within one year of the Commencement Date, and that a subsequent Review is completed each year thereafter during the Term.

Compliance Reports

- 2.13 BIG W will use its best endeavours to ensure that within twenty-eight (28) business days of the completion of a Review, the Reviewer includes the following findings of the Review in a report provided to BIG W including the Compliance Personnel (the **Compliance Report**):
- a. whether the Compliance Program of BIG W includes all the elements detailed in this Part 2, paragraphs 2.1 to 2.11 inclusive above, and if not, what elements need to be included or further developed;
 - b. whether the staff training identified in this Part 2, paragraph 2.8 is effective and if not, what aspects need to be further developed;
 - c. whether BIG W's Complaints Handling System is effective and if not, what aspects need to be further developed; and
 - d. whether BIG W is able to provide confidentiality and security to competition and consumer law whistleblowers, and whether staff are aware of the whistleblower protection mechanisms; and
 - e. whether there are any material deficiencies in BIG W's Compliance Program, or whether there are or have been any instances of material non-compliance with the Compliance Program (**Material Failure**¹) and if so, recommendations for

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

rectifying the Material Failure/s.

- 2.14 BIG W will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.

BIG W's response to Compliance Reports

- 2.15 BIG W will ensure that the Compliance Personnel, within 14 days of receiving the the Compliance Report:
- a. provides the Compliance Report to the Board and/or senior management;
 - b. where a Material Failure is identified in the Compliance Report, BIG W will provide the Compliance Report to the Board and senior management as well as a report on how BIG W can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure.
- 2.16 BIG W 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

- 2.17 Where a Material Failure has been identified by the Reviewer in the Compliance Report, BIG W will:
- a. provide a copy of that Compliance Report to the ACCC within seven (7) business days of the Board and senior management receiving the Compliance Report; and
 - b. inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or
 - c. otherwise outline the steps BIG W 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

- 2.18 BIG W will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than 5 years from the Commencement Date. If requested by the ACCC during the period of 5 years from the Commencement Date, BIG W will, at its own expense, cause to be produced and provide to the ACCC any Compliance Report prepared by the Reviewer during the Term, and copies of all documents constituting the Compliance Program, including:
- a. BIG W's compliance policy;
 - b. an outline of the Complaints Handling System;
 - c. the whistle-blower policy referred to in this Part 2, paragraphs 2.5 and 2.6;
 - d. Relevant training materials, including induction materials, provided to staff in relation to their obligations under the ACL; and
 - e. copies of the reports to the Board and/or senior management referred to in this Part 2, paragraph 2.11.

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- incorporate a requirement of the Undertaking in the design of the Compliance Program, for example if the 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.

ACCC recommendations

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