

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth)

by Chrisco Hampers Australia Limited ABN 41 080 852 535

Person giving the Undertaking

1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Chrisco Hampers Australia Limited ABN 41 080 852 535 (**Chrisco**), for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**).

Background

2. Chrisco retails Christmas hampers and other merchandise, predominately via lay-by agreement, to Australian consumers. Chrisco does not operate physical retail outlets, rather, it promotes and sells its goods via a catalogue and website associated with the domain name www.chrisco.com.au.
3. Consumers are able to place orders for hampers and other merchandise from Chrisco by completing an order form (available from a catalogue or by downloading and printing it from the Chrisco website), making an online order via the Chrisco website, or placing an order over the telephone.
4. Chrisco is registered in New Zealand and employs 90 full time staff in New Zealand, Australia and Canada.

ACCC concerns

5. The ACCC considers that Chrisco's standard form lay-by agreements include a term regarding the operation of Chrisco's HeadStart Plan that is unfair to consumers, and is therefore void under section 23 of the *Australian Consumer Law* (**ACL**).
6. The ACCC also considers that Chrisco made false or misleading representations to consumers, in contravention of sections 18 and 29(1)(d) of the ACL, by sending emails and text messages promoting the HeadStart Plan. The promotional messages invited consumers to redeem a credit by clicking on an image in the message. When consumers clicked on the image, Chrisco immediately signed them up to a HeadStart Plan without seeking any further consent. By doing so, the ACCC considers that Chrisco misrepresented to consumers that they had agreed to acquire goods from Chrisco.

HeadStart Plan Term

7. Since at least 26 October 2018, Chrisco has entered into, or renewed, lay-by agreements, being standard form contracts, with individuals for the supply of goods wholly or predominantly for personal, domestic or household use or consumption.
8. The agreements include a term that Chrisco refers to as a HeadStart Plan (**HSP**) (referred to as 'the **HSP Term**').
9. The HSP Term allows Chrisco to continue to take regular payments from a customer after the customer has finished paying for the goods that they originally purchased from Chrisco. These additional payments can then be used towards the purchase of goods from Chrisco for the following year.
10. Customers had the ability to 'opt out' of the HSP Term by ticking an 'opt out' box when placing an order with Chrisco.
11. The HSP is fully refundable and customers have the option to cancel their HSP at any time without incurring any cancellation fees.
12. If a customer with a HSP does not place an order for goods by a certain date, Chrisco will automatically convert the HSP into an order and notify the customer that an order has been placed on their behalf. In circumstances where a customer does not confirm an order that has been automatically placed by Chrisco, Chrisco will fill this order and deliver it to the customer.

13. The ACCC considers that the HSP Term is an unfair contract term within the meaning of sections 23 and 24 of the ACL, contained in Schedule 2 of the CCA. Specifically, the ACCC considers that the HSP Term:
- a. creates a significant imbalance in the parties' rights and obligations;
 - b. is not reasonably necessary to protect Chrisco's legitimate business interests; and
 - c. would cause detriment to an individual if applied or relied upon, by permitting Chrisco to continue to take payments from an individual after the individual has met their financial obligations to Chrisco in respect of the original order.

HSP Promotional Emails and SMSs

14. Between 28 August 2018 and 24 April 2019, Chrisco sent emails (**HSP Promotional Emails**) and text messages (**HSP Promotional SMSs**) to consumers as part of a promotional campaign to encourage them to sign up to a HSP.
15. The HSP Promotional Emails and SMSs were sent to consumers who had previously:
- a. placed an order with Chrisco; or
 - b. requested a catalogue from Chrisco.
16. The HSP Promotional SMSs contained a link which, if clicked on by a consumer using an internet-enabled device, took the consumer to a landing page containing the same or similar information to that which was contained in the HSP Promotional Emails.
17. In both the HSP Promotional Emails and the landing page, Chrisco invited consumers to redeem a credit on an account with Chrisco by clicking on an image displayed in the email or landing page.
18. When a consumer clicked on that image, Chrisco, without seeking any further consent from the relevant consumer or requesting any further information from them, automatically created a HSP agreement for the consumer, and:
- a. in relation to those consumers whose bank account details were available to Chrisco as a result of its previous dealings with those consumers, commenced deducting payments under the HSP from the consumer's bank account following the provision to those consumers of an order confirmation document setting out a payment schedule for the HSP; or
 - b. in relation to those consumers for which Chrisco did not have bank account details, sought payment under the HSP from the consumer.
19. The ACCC considers that, by engaging in this conduct in relation to each consumer that was sent a HSP Promotional Email or SMS and whom clicked on the image contained within, Chrisco made a false or misleading representation that the consumer had agreed to acquire goods from Chrisco, when they had not, in contravention of sections 18 and 29(1)(d) of the ACL.

Admissions, Acknowledgments and Resolution

20. For the purposes of this Undertaking:
- a. by reason of the matters set out at paragraphs 7 to 13, Chrisco acknowledges that the HSP Term, particularly in circumstances where it required customers to opt out of making payments to Chrisco, may be an unfair contract term within the meaning of sections 23 and 24 of the ACL; and
 - b. by reason of the matters set out at paragraphs 14 to 19 above, in respect of the HSP Promotional Emails and SMSs, Chrisco admits that it likely made false or misleading representations to consumers in contravention of sections 18 and 29(1)(d) of the ACL.
21. To resolve the ACCC's concerns, Chrisco has offered this Undertaking to the ACCC.

Commencement and terms of the Undertaking

22. This Undertaking comes into effect when:
- a. this Undertaking is executed by Chrisco; and
 - b. this Undertaking so executed is accepted by the ACCC (**the Commencement Date**).
23. This Undertaking has effect for three years after the Commencement Date (**the Term**).

24. Upon the Commencement Date, Chrisco undertakes to assume the obligations set out in paragraphs 25 to 36 below for the Term of the Undertaking for the purposes of section 87B of the CCA.

Chrisco's terms and conditions

25. By 31 October 2020, Chrisco will amend its standard terms and conditions to:
- a. make the HSP Term opt in, by placing a positive obligation on customers to choose whether or not they wish to participate in a HSP each year; and
 - b. ensure that the effect and operation of the HSP Term is clearly and prominently explained to consumers, in particular with respect to its practice of automatically converting a HSP into an order and then filling and delivering that order, even in circumstances where a customer with a HSP has not actively confirmed their order, including that, an order that has been automatically placed is fully refundable even after delivery (upon return of the goods).
26. By 31 October 2020, Chrisco will ensure that the amendments to the standard terms and conditions referred to in paragraph 25 above, are made in any document or page of the Chrisco website, or any part of the Chrisco catalogue, where the standard terms and conditions are located.

Confirmation to customers about HSPs

27. For customers who opt into a HSP for a given year and subsequently place an order, or have Chrisco place an order on their behalf, pursuant to the HSP, Chrisco will request the customer to actively advise Chrisco (via online, email, mail or telephone, depending on the customer's preferred method of communication) whether they wish to continue participating in a HSP for the following year. Chrisco will do so no later than 12 weeks prior to those customers making their final payment on the order made pursuant to the HSP, unless the customer has already separately advised Chrisco that they wish to participate in a HSP for the following year, or if they positively opted into a HSP for the following year when placing their order for the current year.
28. For current 2020 customers who had not opted out of the HSP, Chrisco will contact each customer no later than 12 weeks prior to them making their final payment on their current order, to request the customer to actively advise Chrisco (via online, email, mail or telephone) whether or not they wish to continue participating in a HSP for 2021, unless, prior to the date of this Undertaking, the customer has already separately advised Chrisco that they wish to participate in a HSP for 2021.
29. Chrisco will, after receiving a customer's final payment for that year's order, not take or request any further payment from the customer unless the customer has actively advised Chrisco that they wish to continue to participate in a HSP for the following year.

Communications to customers about Chrisco placed orders

30. Chrisco will, within 30 days of the Commencement Date, send or cause to be sent a communication in the form provided at **Annexure A** to this Undertaking, to those customers whose 2020 HSP has been automatically converted into an order by Chrisco but not yet confirmed by the customer.

Confirmation documents

31. Chrisco will send or cause to be sent:
- a. in relation to each customer who signs up to a HSP, a form with the heading 'HeadStart Confirmation' which states that the customer has signed up to a HSP, and provides at least the following information:
 - i. payment frequency;
 - ii. payment amount;
 - iii. payment method;
 - iv. first payment date;
 - v. Chrisco's terms and conditions in relation to the HSP, including its cancellation policy; and
 - vi. a link to access Chrisco's full standard terms and conditions.

- b. in relation to each customer who places a specific order for a hamper or goods, a form with the heading 'Order Confirmation', which states that the customer has placed an order with Chrisco, and provides at least the following information:
 - i. name of the hamper or other goods purchased;
 - ii. payment frequency;
 - iii. payment amount;
 - iv. payment method;
 - v. first and last payment date;
 - vi. total payment amount;
 - vii. Chrisco's terms and conditions in relation to the HSP, including its cancellation policy; and
 - viii. a link to access Chrisco's full standard terms and conditions.

32. The heading for each form will be in bold font and in at least 20 point type.

HSP promotional materials

33. In relation to any electronic promotions, Chrisco will:

- a. not send emails and SMSs that utilise a single activation process in order to create a HSP agreement for a consumer; and
- b. only use a multi-step confirmation process in order to create a HSP agreement for a consumer, ensuring it includes the following steps:
 - i. First, the consumer must click the 'Yes' option (within the email or SMS) to indicate their desire to activate a HSP. This action will not activate the HSP until further confirmation is provided by the customer. The first communication will include a link to Chrisco's HSP terms and conditions.
 - ii. Second, if the consumer clicks 'Yes', a second page will open and the consumer will be asked to confirm 'Yes' or they may select 'No'. If the consumer clicks 'No', no further action is required. A HSP will not be activated if the consumer clicks 'No' or ignores the email or SMS. A link to Chrisco's HSP terms and conditions will also appear on this second page.
 - iii. Third, if the consumer clicks 'Yes', a third page will open and the consumer will be invited to complete a direct debit form in which the consumer will be required to input or confirm their payment details, including the frequency of HSP payments. A link to Chrisco's HSP terms and conditions will also appear on this page. If a consumer's bank details are already known to Chrisco, the form will pre-populate this information, which will still need to be positively confirmed or changed. A consumer must confirm their payment details before a HSP may be created. Once a consumer confirms their sign up to a HSP, they will then receive a HeadStart Confirmation from Chrisco, as outlined at paragraph 31(a) above, within 24 hours, or up to 72 hours of signing up to a HSP on a Friday or weekend.

Payment to affected customers

34. Chrisco will, within 30 days of the Commencement Date, identify and pay a sum of AUD \$20.00 to those customers who:
- a. responded to a single activation HSP Promotional Email or SMS between 28 August 2018 and 24 April 2019;
 - b. had their bank account direct debited by Chrisco;
 - c. as a result, were charged a bank fee by their financial institution due to there being insufficient funds in their bank account; and
 - d. have not already been compensated by Chrisco in respect of the bank fees charged.

Consumer Compliance Program

35. Chrisco will, within 30 days of the Commencement Date, establish and implement a Consumer Compliance Program (**Compliance Program**) in accordance with the requirements set out in **Annexure B** to this Undertaking, being a program designed to minimise Chrisco's risk of imposing an unfair contract term within the meaning of sections 23 and 24 of the ACL and/or contravening sections 18 and/or 29(1)(d) of the ACL.
36. Chrisco will maintain and continue to implement the Compliance Program for a period of three years from the Commencement Date.

ACCC enquiries


37. For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with Chrisco, and Chrisco will respond to such enquiries within a reasonable period of time.
38. If requested by the ACCC during the Term of this Undertaking, Chrisco will, at its own expense, cause to be produced and provided to the ACCC copies of all documents (excluding any legally privileged documents) evidencing the obligations set out above in this Undertaking and their implementation.

Acknowledgments

39. Chrisco 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 this 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 B** of this Undertaking may be held with this Undertaking in the public register.

Executed as an Undertaking

Executed by Chrisco Hampers Australia Limited ABN 41 080 852 535 by its authorised signatory:


Signature
GEOFFREY MICHAEL SPONGA.
Name of authorised signatory (print)
14 TH JULY 2020
Date

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

17 July 2020

Date

and signed on behalf of the Commission:



Chair

Rodney Graham Sims

Date

17 July 2020

Annexure A – Notification to Consumers

Mail Version:

Dear [insert name]

Your current Chrisco order and your Refund Rights

The deadline for converting your HeadStart Plan with Chrisco was 15 March 2020. As you did not convert your HeadStart Plan into an order by this date, we automatically converted it into an order for you and sent you an Order Confirmation.

Based on the value of this order, you are currently making payments of [\$xx] each [Payment_Frequency] via [Payment_Method] towards an order detailed in the attached Order Confirmation, with a total cost to you of [\$xx].

We have provided with this letter another copy of the **Order Confirmation** detailing the order placed on your behalf.

You can choose from the following options by contacting us on 1800 830 830 or via email at cs@chrisco.com.au:

Option 1: Confirm the order	Option 2: Amend the order	Option 3: Cancel the order
You will receive the order as per the Order Confirmation.	You can choose another product from our range. The payments you have made will be credited to the order.	You will not receive the order. You will obtain a full refund.

Terms & Conditions

If you choose to confirm or amend the order we have placed for you, Chrisco's Cancellation Policy will apply. A copy of the Cancellation Policy is available at: <https://www.chrisco.com.au/GeneralTermsandConditions/>.

If you do not contact us, we will continue to take payments and will deliver the order to you on your delivery date indicated on your Delivery or Pick up Advice to be sent to you in September. However, you will still be entitled to a full refund (even after delivery and upon the return of the goods), unless you confirm with us that you would like to keep the order.

If you have any questions, please contact us on 1800 830 830 or via email at cs@chrisco.com.au.

Yours sincerely

Chrisco Customer Service Team

Email Version:

Email subject heading: IMPORTANT: Your current Chrisco order and your Refund Rights

Dear [insert name]



Your current Chrisco order and your Refund Rights

The deadline for converting your HeadStart Plan with Chrisco was 15 March 2020. As you did not convert your HeadStart Plan into an order by this date, we automatically converted it into an order for you and sent you an Order Confirmation.

Based on the value of this order, you are currently making payments of [\$xx] each [Payment_Frequency] via [Payment_Method] towards an order detailed in the attached Order Confirmation, with a total cost to you of [\$xx].

We have attached another copy of the **Order Confirmation** detailing the order placed on your behalf.

You can choose from these options:

Option 1: Confirm the order	Option 2: Amend the order	Option 3: Cancel the order
You will receive the order as per the Order Confirmation.	You can choose another product from our range. The payments you have made will be credited to the order.	You will not receive the order. You will obtain a full refund.
<i>I want to confirm my order</i> (Click on the Trolley)	<i>I want to amend my order</i> Please contact us on 1800 830 830 or via email at cs@chrisco.com.au.	<i>I want to cancel my order</i> (Click on the cross)
		
Or call 1800 830 830 or email us at cs@chrisco.com.au.		Or call 1800 830 830 or email us at cs@chrisco.com.au

Terms & Conditions

If you choose to confirm or amend the order we have placed for you, Chrisco's Cancellation Policy will apply. A copy of the Cancellation Policy is available at:
<https://www.chrisco.com.au/GeneralTermsandConditions/>.

If you do not contact us, we will continue to take payments and will deliver the order to you on your delivery date indicated on your Delivery or Pick up Advice to be sent to you in September. However, you will still be entitled to a full refund (even after delivery and upon the return of the goods), unless you confirm with us that you would like to keep the order.

If you have any questions, please contact us on 1800 830 830 or via email at cs@chrisco.com.au.

Yours sincerely

Chrisco Customer Service Team

If the customer clicks on the “trolley”, the customer will be directed to a Chrisco webpage which would contain the following:

I have reviewed the **Order Confirmation** and confirm this order.

My payment amount is **<Payment_Amount>** and will continue each **<Payment_Frequency>** with my last payment date of **<Last Payment Date>** via **<Payment_Method>**.

I understand that I may change my order any time up to 23 October 2020 and can cancel my order as per the Cancellation Policy provided below.

3. CANCELLATION POLICY

3.1 HeadStart Cancellation - HeadStart plans can be cancelled at any time and HeadStart Plan payments are fully refundable, until you convert your payments into an order or confirm an order placed for you.

3.2 Order Cancellation - You may cancel your order at any time prior to the delivery of your goods. If you cancel your order within 21 days of the date of your original order confirmation (Cooling Off Period), there will be no cancellation fee.

3.3 After the Cooling Off Period, Chrisco will charge you a cancellation fee as follows:

- prior to 1 August: 20% of monies paid at the cancellation date (up to a maximum cancellation fee of \$200)
- after 1 August: 50% of monies paid at the cancellation date (up to a maximum cancellation fee of \$500)

3.4 Personalised items – Cancellation fees will be incurred on all personalised items if manufacturing has commenced.

Full Terms & Conditions <https://www.chrisco.com.au/GeneralTermsandConditions/>

☐

I have read and understand Chrisco’s Cancellation Policy and confirm the order placed on my behalf.

If the customer checks the box above and confirms their order, the customer will be directed to a webpage containing the following:

Thank you for confirming your order. An Order Confirmation will be sent to you shortly.

If the customer clicks on the “cross”, the customer will be directed to a Chrisco webpage which would contain the following:

☐

I want to cancel the order placed on my behalf and receive a full refund.

If the customer checks the box above and cancels their order, the customer will be directed to a webpage containing the following:

I thank you, your order has been cancelled. You will shortly receive a full refund in the amount of **<insert amount>** by **<insert payment method for refund>**.

ANNEXURE B

COMPETITION AND CONSUMER COMPLIANCE PROGRAM

LEVEL 3

Chrisco Hampers Australia Limited (**Chrisco**) ABN 41 080 852 535 will establish a Consumer Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within one month of the Undertaking coming into effect, Chrisco will appoint a director or a senior manager of the business as a compliance officer, with responsibility for ensuring the Compliance Program is effectively designed, implemented and maintained (**the Compliance Officer**).
2. Within two months of the Undertaking coming into effect, Chrisco will appoint a suitably qualified, internal or external, compliance professional with expertise in competition and consumer law (**the Compliance Advisor**).

Risk Assessment

3. Chrisco will instruct the Compliance Advisor to conduct a consumer law risk assessment within three months of being appointed as the Compliance Advisor (**the Risk Assessment**).
4. Chrisco 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**):
 - a) identification of the areas where Chrisco is at risk of imposing an unfair contract term, or breaching sections 18 and 29 of the Australian Consumer Law (ACL), comprising Schedule 2 of the Competition and Consumer Act 2010 (Cth) (CCA);
 - b) assessment of the likelihood of these risks occurring;
 - c) identification of any gaps in Chrisco's existing procedures for managing these risks; and
 - d) recommendations for any action to be taken by Chrisco having regard to the above assessment.

Compliance Policy

5. Chrisco will, within 30 days of the Undertaking coming into effect, issue a policy statement outlining Chrisco's commitment to compliance with the CCA (**the Compliance Policy**).
6. Chrisco will ensure the Compliance Policy:

- a) contains a statement of commitment to compliance with the CCA;
- b) contains a requirement for all staff to report any Compliance Program related issues and CCA compliance concerns to the Compliance Officer; and
- c) contains a clear statement that Chrisco will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the CCA and will not indemnify them in the event of any court proceedings in respect of that contravention.

Complaints Handling System

- 7. Chrisco will ensure the Compliance Program includes a competition and consumer law complaints handling system capable of identifying, classifying, storing and responding to competition and consumer law complaints (**Complaints Handling System**).

Staff Training

- 8. Chrisco will ensure that the Compliance Program includes a requirement for regular (at least once a year) training for all employees of Chrisco whose duties could result in them being concerned with the imposition of an unfair contract term, or conduct that may contravene sections 18 and 29 of the ACL.
- 9. Chrisco will ensure that the staff training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in consumer law.
- 10. Chrisco will ensure that the Compliance Program includes a requirement that awareness of competition and consumer compliance issues forms part of the induction of all new directors, officers and employees whose duties could result in them being concerned with the imposition of an unfair contract term, or conduct that may contravene sections 18 and 29 of the ACL.

Reports to Board/Senior Management

- 11. Chrisco will ensure that the Compliance Officer reports to the Board and/or senior management annually on the continuing effectiveness of the Compliance Program.

Compliance Review

- 12. Chrisco 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:
 - a) **Scope of Review** – the Review should be broad and rigorous enough to provide Chrisco and the ACCC with:
 - i. a verification that Chrisco has in place a Compliance Program that complies with each of the requirements detailed in paragraphs 1-11 above; and

- ii. the Compliance Reports detailed at paragraph 13 below.
- b) **Independent Reviewer** – Chrisco 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:
- i. did not design or implement the Compliance Program;
 - ii. is not a present or past staff member or director of Chrisco;
 - iii. has not acted and does not act for, and does not consult and has not consulted to, Chrisco in any competition and consumer law matters, other than performing Reviews and/or preparing the Risk Assessment Report under this Undertaking; and
 - iv. has no significant shareholding or other interests in Chrisco.
- c) **Evidence** – Chrisco 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 Chrisco’s possession or control, including without limitation:
- i. the ability to make enquiries of any officers, employees, representatives, and agents of Chrisco;
 - ii. documents relating to the Risk Assessment, including the Risk Assessment Report;
 - iii. documents relating to Chrisco’s Compliance Program, including documents relevant to Chrisco’s Compliance Policy, Complaints Handling System, Staff Training and induction program; and
 - iv. any reports made by the Compliance Officer to the Board or senior management regarding Chrisco’s Compliance Program.
- d) Chrisco 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

13. Chrisco will use its best endeavours to ensure that in within 14 days of a Review, the Reviewer includes the following findings of the Review in a report to Chrisco (**the Compliance Report**):
- a) whether the Compliance Program of Chrisco includes all the elements detailed in paragraphs 1-11 above and if not, what elements need to be included or further developed;
 - b) whether the Compliance Program adequately covers the parties and areas identified in the Risk Assessment, and if not, what needs to be further addressed;

- c) whether the Staff Training and induction is effective, and if not, what aspects need to be further developed;
- d) whether Chrisco's Complaints Handling System is effective, and if not, what aspects need to be further developed;
- e) whether there are any material deficiencies in Chrisco'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/s.¹

Chrisco's response to Compliance Reports

14. Chrisco will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:

- a) provides the Compliance Report to the Board or relevant governing body;
- b) where a Material Failure has been identified by the Reviewer in the Compliance Report, provides a report to the Board or relevant governing body identifying how Chrisco can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure;

15. Chrisco 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

16. Where a Material Failure has been identified by the Reviewer in the Compliance Report, Chrisco will:

- a) provide a copy of the Compliance Report to the ACCC within 14 days of the Board or relevant governing body 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 Chrisco 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

17. Chrisco will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than five years.

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 an 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.

18. If requested by the ACCC during the period of five years following the Undertaking coming into effect Chrisco will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:

- a) the Compliance Policy;
- b) the Risk Assessment report;
- c) an outline of the Complaints Handling System;
- d) Staff Training materials and induction materials;
- e) all Compliance Reports that have been completed at the time of the request;
- f) copies of the reports to the Board and/or senior management referred to in paragraphs 11 and paragraph 16.

ACCC Recommendations

19. Chrisco will implement promptly and with due diligence any recommendations that the ACCC may make that the ACCC deems reasonably necessary to ensure that Chrisco maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking. Further changes to the Chrisco terms and conditions and/or the HSP promotional communications will not be considered to be reasonably necessary in circumstances where Chrisco continues to meet its obligations pursuant to the Undertaking.