

TRADE PRACTICES ACT 1974**UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B****BY****RADIO CABS OF WOLLONGONG CO-OPERATIVE SOCIETY LIMITED
a trading society incorporated under the Co-Operation Act 1923****AND****ALAN METE, STEPHAN LUBUSKA, PETER STRATILAS, JOZEF ISKRA,
MOHAMAD ABOU-CHACRA, ROBERT HOSWELL, MOHAMAD CHOUBASSI**being the Board of Directors of
Radio Cabs of Wollongong Co-Operative Society Limited**BACKGROUND**

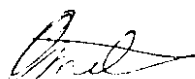
1. Radio Cabs of Wollongong Co-Operative Society Limited ("Radio Cabs of Wollongong") was incorporated as a trading society under the Co-Operation Act (NSW) 1923-1950 in the State of New South Wales. Radio Cabs of Wollongong commenced operations on 11 March 1955. Radio Cabs of Wollongong is licenced by the New South Wales Department of Transport to provide a radio network service for taxi cabs within the Wollongong Transport District and the Shellharbour Municipality, an area that extends from Stanwell Park in the north along the escarpment to Albion Park and bounded by the Pacific Ocean.

2. Radio Cabs of Wollongong's principal activity is the provision of radio network services to taxi cab owners and operators. There are approximately 123 taxi cabs operating in the radio network known as Radio Cabs of Wollongong.

3. On or about 18 February 1992 Radio Cabs of Wollongong, with the approval of the Registrar of Co-Operative Societies (NSW), resolved to amend its rules by the insertion of the following rule:

"Rule 16 Mobile telephones.

Rule 16.1 No member shall install, use or permit to be used in or in connection with his taxi cab any mobile or other telephone or other communication device (except a radio telephone approved by the Society to make and receive calls to and from the Society).



Rule 16.2 No member shall use or permit to be used any mobile or any other telephone or other communication device (except a radio telephone to make and receive calls to and from the Society) to receive, facilitate or otherwise obtain bookings for passengers or otherwise.

Rule 16.3 A breach of this Rule shall be deemed to be conduct detrimental to the Society within the meaning of model Rule 22."

4. On or about 19 August 1993 the Australian Competition and Consumer Commission ("the Commission") wrote to Higgins Dyson & Webley, solicitors for Radio Cabs of Wollongong, outlining that the Commission considered there was no public benefit in banning the use of mobile phones in taxis. A copy of the Commission's decision in the 1990 Silver Top Taxi Service application for authorisation banning the use and installation of mobile phones in its taxi cabs was enclosed. In that decision the Commission considered the conduct anti competitive and refused to authorise the conduct.

5. During the course of the Commission's investigation into Radio Cabs of Wollongong the Model Rules, Radio Cabs of Wollongong's amendments thereto and the Radio Service By-Laws and Information were examined. The Commission considers that paragraph 4A inserted in Model Rule 6 is in contravention of section 45 of the Trade Practices Act 1974, ("the Act"). The Commission also considers that Radio Service By-Laws 5 and 6 are in contravention of section 45 of the Act. The Commission considers that these rules and by-laws are a contract arrangement or understanding restricting dealings or affecting competition in contravention of section 45 of the Act.

6. In or about October 1996 at its Annual General Meeting the members of Radio Cabs resolved that the following Special Resolution be substituted for the existing Rule 16:

"Rule 16. Mobile Telephones

16.1 No owner or driver shall install, have or carry in his taxi cab, use or permit to be used in or in connection with his taxi cab any mobile or other telephone or other communication device (except a radio telephone approved by the Society to make and receive calls to and from the Society).

16.2 No owner or driver shall use or permit to be used any mobile or any other telephone or other communications device (except a radio telephone approved

by the Society to make and receive calls to and from the Society) to receive, facilitate or otherwise obtain bookings from passengers or otherwise.

16.3 A breach of this Rule or any subparagraph of it shall be deemed to be conduct detrimental to the Society within the meaning of model Rule 22.

16.4 For the purpose of this Rule a lessee of a taxi cab shall be deemed to be an owner of that taxi cab.”

7. The insertion of the new Rule 16 was notified to members of Radio Cabs of Wollongong in a newsletter dated November 1996.

8. On or about 6 December 1996 the Commission received a complaint from Mr Michael St John (“St John”). St John stated that, following a complaint from the Chairman, Mr Alan Mete, of the Board of Radio Cabs of Wollongong; St John was summoned to appear before a meeting of the Complaints Committee of the Board of Directors of Radio Cabs of Wollongong to explain the reasons that he was carrying and using a mobile telephone in his taxi cab.

9. On 26 November 1996 the Complaints Committee of the Board of Directors of Radio Cabs of Wollongong met and resolved that St John be suspended from all Radio Work for a period of 30 days commencing at 8.00am on Tuesday 17 December 1996. This decision meant that St John would not have access to the radio network for that period of time. St John was notified of the Boards decision by letter dated 5 December 1996.

10. On or about 13 December 1996 the Commission wrote to the Manager of Radio Cabs of Wollongong, Mr N Katselos, informing Radio Cabs of Wollongong that the Commission was concerned that the conduct of Radio Cabs of Wollongong and its Directors was likely to be in breach of sections 45 and/or 46 of the Trade Practices Act 1974 (“the Act”) by:

- (a) giving effect to Rule 16 of Radio Cabs of Wollongong’s Radio Service By-laws and Information; and
- (b) giving effect to the penalty imposed on St John by Board of Directors of Radio Cabs of Wollongong on 26 November 1996 and as notified to St John by letter of 5 December 1996;



11. On 13 December 1996 Radio Cabs of Wollongong's solicitors sent a letter to the Commission stating that St John had lodged an appeal against the suspension and that the suspension would not now come into effect on 17 December 1996.

12. On 17 December 1996 a further response was received from Radio Cabs of Wollongong's solicitors stating that St John's suspension would not take effect pending the hearing of the appeal in January 1997

13. On or about 18 December 1996 Radio Cabs of Wollongong offered to the Commission an informal undertaking that the appeal of St John would not be heard or determined until the matters raised by the Commission had been resolved and that representatives of Radio Cabs of Wollongong would meet with officers of the Commission in the second week of January 1997.

14. On 9 January 1997 St John notified Mr Barry Doolan of the Commission that he had been called before the Board of Directors of Radio Cabs of Wollongong in relation to an allegation by Mr Mete, the Chairman of Radio Cabs of Wollongong, that St John had used abusive language during his appearance before the Board on 26 November 1996.

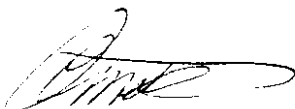
15. By letter dated 9 January 1997 the Commission informed Radio Cabs of Wollongong, through its solicitors, that the action referred to in paragraph 14 above could be construed as a contravention of section 162A of the Act.

16. On 10 January 1997 Radio Cabs of Wollongong responded to the Commission that it would take no further action against St John in relation to the allegation of using abusive language prior to meeting with the Commission on 14 January 1997 to discuss the issues of concern to the Commission.

17. On the 14 January 1997 representatives of Radio Cabs of Wollongong met with Officers of the Commission and discussed the matter generally. The parties agreed that after considering the options and the matter generally Radio Cabs of Wollongong would respond to the Commission by close of business on 21 January 1997.

18. On the 21st January 1997 Radio Cabs of Wollongong wrote to the Commission seeking a twenty one (21) day extension in which to seek advice and then to further contact the Commission about the matter.

19. After discussions between the solicitor for Radio Cabs of Wollongong and the Commission the Commission wrote to the solicitor for Radio Cabs of Wollongong and



extended the time within which Radio Cabs of Wollongong must respond to the Commission by close of business on 31 January 1997.

In order to address the Commission's concerns, Radio Cabs of Wollongong has agreed to give to the Commission the Undertaking which is set out below.

UNDERTAKING

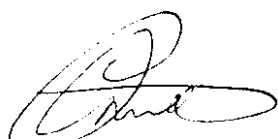
Radio Cabs of Wollongong undertake for the purposes of section 87B of the Act, 1974 that it will hereafter, whether by itself, its directors, employees or agents:

1. refrain from taking any action against St John in relation to his carrying and using a mobile phone or any other matter relating to his appearance before the Complaints Committee of the Board of Directors on 26 November 1996.
2. ensure that no owner, driver or lessee who carries or uses a mobile phone in his/her taxi cab is denied access to the radio network of Radio Cabs of Wollongong by reason of having carried or used a mobile phone;
3. notify all owners and lessees that no action will be taken against them for carrying or using a mobile telephone in a taxi cab;
4. within 60 days of the date of this undertaking call and hold an Extraordinary General Meeting for the purposes of rescinding:
 - (i) Rule 16 from the Radio Cabs of Wollongong's, Radio Service By-Laws and Information and Model Rules;
 - (ii) Rule 4A from Model Rule 6 of the Model Rules for a Trading Society; and
 - (iii) By-Laws 5 and 6 of the Radio Service By-Laws and Information
5. within 30 days of the date of the Extraordinary General Meeting notify all owners, and lessees by letter, in terms acceptable to the Commission, of the rescission of:
 - (i) Rule 16 from the Radio Cabs of Wollongong's, Radio Service By-Laws and Information and Model Rules;
 - (ii) Rule 4A from Model Rule 6 of the Model Rules for a Trading Society; and



(iii) By-Laws 5 and 6 of the Radio Service By-Laws and Information

6. at its own expense conduct, within three (3) months of this undertaking, seminars for all owners, drivers and lessees concerning their rights and obligations under the Trade Practices Act, such seminars to be conducted by staff of the Commission, the Commission's normal charges of this to be met by Radio Cabs of Wollongong, and/or suitably qualified legal practitioner(s) acceptable to the Commission and in a form approved by the Commission;
- 6A Radio Cabs of Wollongong shall use its best endeavours to procure the attendance of owners and lessees at the trade practices seminar referred to in clause 6.
7. within 30 days of the date of this undertaking Radio Cabs of Wollongong send a letter to all its owners and lessees, in terms acceptable to the Commission, enclosing a copy of the executed undertakings, and briefly explaining their import;
- 7A. within 30 days of the date of the extraordinary general meeting Radio Cabs of Wollongong cause to be made over its radio network an announcement, in a form acceptable to the Commission, notifying all drivers of the undertaking given to the Commission and the rescission of the rules and by laws referred to in paragraph 5 above. Such announcement to be made twice a day, once between 9.00am and 11.00am and once between 4.00pm and 6.00pm for a period of seven (7) days.
8. within two (2) months of the date of this undertaking develop for consideration by the Commission a Trade Practices Compliance program with the following characteristics:
- (a) Aim
- to create a culture of compliance throughout Radio Cabs of Wollongong and to prevent, so far as is reasonably possible, any contraventions of the Act by Radio Cabs of Wollongong, its directors, employees or agents.
- (b) Policy
- the formal adoption, or re-affirmation, by Radio Cabs of Wollongong, of a policy of strict compliance with both the letter and spirit of the Act within Radio Cabs of Wollongong and the adoption, or re-affirmation, and



enforcement of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act.

(c) Compliance Infrastructure

The appointment of an appropriately qualified named senior executive as the Radio Cabs of Wollongong Compliance Officer with overall responsibility for trade practices compliance.

(d) Coverage

The compliance program is to cover all directors, employees and agents of Radio Cabs of Wollongong whose duties could result in them being concerned in conduct that might breach the Act ("relevant staff").

(e) Education

Development and implementation of an education program calculated to have the relevant staff conversant with the provisions of the Act to a level where:

- (i) general staff can avoid obvious contraventions and can identify more complex potential trade practices problems for referral to the appropriate person in the Radio Cabs of Wollongong compliance infrastructure;
- (ii) persons with responsibilities within the Radio Cabs of Wollongong compliance infrastructure can effectively carry out those responsibilities; and
- (iii) the Radio Cabs of Wollongong Compliance Officer can address more complex trade practices issues and (if that person is not legally qualified and able to give the relevant advice) identify issues which require referral to Radio Cabs of Wollongong's solicitors.

- (f) Radio Cabs of Wollongong will make whatever changes to the draft program that the Commission may reasonably require and will then prepare and submit to the Commission a trade practices compliance program which shall be a document comprising the draft program with all changes reasonably required by the Commission incorporated therein.



- (g) that it will implement the trade practices compliance program within three (3) months of the Commission advising of the changes it requires to the draft program and that the trade practices compliance program will remain in force, subject to the requirements of paragraph 11, for a minimum period of three years from the signing of this undertaking;
9. At the end of each twelve (12) month period following the signing of this undertaking, Radio Cabs of Wollongong will cause an independent auditor (who shall be an independent accountant or solicitor approved by the Commission) to review and report on:
- (a) Radio Cabs of Wollongong's compliance with these undertakings over the preceding twelve (12) months;
 - (b) the implementation of the trade practices compliance and the achievement of its objectives over the preceding twelve (12) months; and
 - (c) any recommended changes to the trade practices compliance that may be necessary to ensure achievement of its objectives.
10. Radio Cabs of Wollongong will cause the independent auditor to complete the review and to provide a copy of his or her report to Radio Cabs of Wollongong and to the Commission within thirty (30) days of the end of each twelve (12) month period.
11. Radio Cabs of Wollongong will incorporate into the trade practices compliance program, and implement as part of that program, all changes to it that are reasonably recommended by the independent auditor in his or her report and are also approved by the Commission in writing.
12. In so far as this Undertaking is given by the individuals named herein as the Board of Directors it is given in the capacity of those individuals as Directors of Radio Cabs of Wollongong and will not, so far as the individuals named are concerned, relate to any period which occurs after the date upon which the individuals or any of them shall cease to be Directors of Radio Cabs of Wollongong.



ACKNOWLEDGMENTS

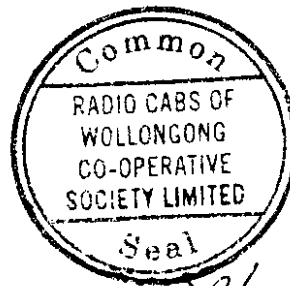
Radio Cabs of Wollongong acknowledges that the Commission will make this undertaking available for public inspection.

Radio Cabs of Wollongong further acknowledges that the Commission will from time to time publish and publicly refer to this undertaking at its discretion.

Radio Cabs of Wollongong further acknowledges that this undertaking in no way derogates from the rights and remedies available to any person arising from the alleged conduct.

Radio Cabs of Wollongong further acknowledges that the reports referred to in paragraph 8 and the trade practices compliance program as in force from time to time will be held with this undertaking on the Commission's public register.

**THE COMMON SEAL of RADIO
CABS OF WOLLONGONG
CO-OPERATIVE SOCIETY LIMITED**)
is affixed in accordance with its articles of)
association in the presence of:)



P. Stratilias
.....
Director

[Signature]
.....
Secretary

this 11th day of FEBRUARY 1997

SIGNED, SEALED AND DELIVERED)

by the said **ALAN METE** this 11th)
day of FEBRUARY 1997)

[Signature]
.....
Alan Mete

[Signature] J.P.
.....
Witness

SIGNED, SEALED AND DELIVERED)

by the said **STEPHEN LUBUSKA** this)

11th day of *FEBRUARY* 1997)

S. Lubuska
.....

Stephen Lubuska

L. Stratilas J.P.
.....

Witness

SIGNED, SEALED AND DELIVERED)

by the said **PETER STRATILAS** this)

12th day of *February* 1997)

P. Stratilas
.....

Peter Stratilas

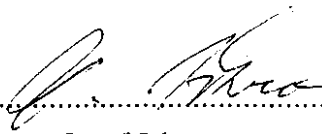
L.P. JP
.....

Witness

SIGNED, SEALED AND DELIVERED)

by the said **JOZEF ISKRA** this *11th*)

day of *FEBRUARY* 1997)


.....
Jozef Iskra


Shatby J.P
.....

Witness

SIGNED, SEALED AND DELIVERED)

by the said **MOHAMAD ABOU-CHACRA**)

this *11th* day of *FEBRUARY* 1997)


.....
Mohamad Abou-Chacra

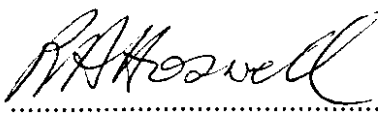
Shatby
.....

Witness

SIGNED, SEALED AND DELIVERED)

by the said **ROBERT HOSWELL** this)

11th day of *FEBRUARY* 1997)


.....
Robert Hoswell


Shatby J.P
.....

Witness


SIGNED, SEALED AND DELIVERED)

by the said MOHAMAD CHOUBASSI)

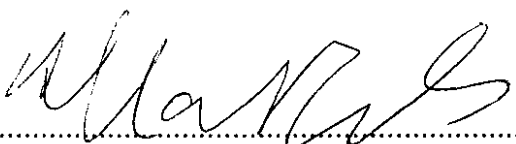
this 11th day of FEBRUARY 1997)


.....
M. Choubassi

Mohamad Choubassi




.....

Witness


.....

(Professor Allan Fels)

Chairman

this  day of  1997