

Trade Practices Act 1974**Undertaking to the Australian Competition and Consumer
Commission given for the purposes of Section 87B****by****Mayne Nickless Limited****ACN 004 073 410****Recitals**

- A. Mayne Nickless Limited ("**Mayne**"), through its wholly owned subsidiary, HCoA Hospital Holdings (Australia) Pty Limited, ACN 079 097 528, has made an offer to acquire all of the issued shares in Australian Hospital Care Limited (ACN 072 273 931) ("**AHC**") ("**Proposed Acquisition**").
- B. The Proposed Acquisition is subject to a number of approvals, including regulatory approvals.
- C. Mayne has made submissions to the Australian Competition & Consumer Commission (the "**Commission**") and has expressed the view that the Proposed Acquisition will not have the effect of substantially lessening competition in any market or in any state of Australia, including in the Gold Coast region and in metropolitan Melbourne.
- D. The Commission has expressed concerns that the Proposed Acquisition will contravene section 50 of the *Trade Practices Act, 1974* in certain markets in the Gold Coast region and in metropolitan Melbourne.
- E. Mayne does not agree with any of the concerns expressed by the Commission with respect to the Proposed Acquisition but has agreed (without admission) to give the undertakings contained in this document to overcome those concerns.
- F. The Commission agrees that upon implementation of this Undertaking its concerns in respect of the Proposed Acquisition will be overcome.

1. Definitions

"**Allamanda Hospital**" means the hospital located at 150 Queen St, Southport, Queensland which is owned and operated by AHC Limited.

"Assets" when used in relation to any hospital means the assets of the hospital as at the Effective Date, or assets of a substantially similar kind and quality to those used to provide services at that hospital as at the Effective Date and includes all fixed assets items of plant and equipment owned by AHC, used exclusively in respect of the hospital and necessary for the operation of the hospital; and all operational business records exclusively relating to the hospital but excludes any debts owed to AHC in respect of the hospital.

"Business Days" means a day on which all banks are open for business generally in Victoria and Queensland.

"Effective Date" means the later of:

- (a) the date on which the Offer becomes unconditional or the date upon which Mayne becomes entitled to 50.1% of the issued shares in AHC; and
- (b) the date on which this undertaking has been executed by Mayne and executed and accepted by the Commission.

"Force Majeure" means:

- (a) any act of God;
- (b) war, revolution, or any other unlawful act against public order or authority;
- (c) an industrial dispute beyond the control of Mayne and/or its subsidiaries; or
- (d) a governmental restraint.

"Mitcham Hospital" means the hospital located at 27 Doncaster East Road, Mitcham, Victoria.

"Northpark Hospital" means the hospital located at corner of Plenty Road and Greenhills Road, Bundoora, Victoria.

"Offer" means the offer dated 5 December 2000 made by Mayne to acquire all of the issued shares in AHC.

"South Eastern Hospital" means the hospital located at Princes Highway (corner of Heatherton Road), Noble Park, Victoria.

"Undertaking Period" means the period commencing on the Effective Date and ending 18 months after that date.

2. Commencement of this Undertaking

2.1 Commencement

This undertaking commences into effect when:

- (a) the undertaking is executed by Mayne; and
- (b) the undertaking so executed is accepted by the Commission.

3. Sale of Assets

3.1 Obligation

Mayne will cause AHC to sell its interest in the Assets of each of Allamanda Hospital, Mitcham Hospital, Northpark Hospital and South-Eastern Hospital on a going concern basis in accordance with the sale process set out in this clause 3 and in Annexure A.

3.2 No other Sale

Mayne will not sell the Assets referred to in clause 3.1 except in accordance with this Undertaking.

3.3 Transitional Arrangements

- (a) Mayne will do all things in its power or control to ensure that each of the hospitals identified in paragraph 3.1 continues to be run in the normal course of business as far as possible in the circumstances during the course of the sale of the Assets and until completion of that sale.
- (b) Mayne will not reduce the scope of any specific clinical services provided at any of Allamanda Hospital, Mitcham Hospital, Northpark Hospital and South-Eastern Hospital between the Effective Date and the date of the completion of the sale of that hospital.
- (c) If any Hospital Purchaser Provider Agreements with a Health Fund fall for renegotiation in Queensland during the Undertaking Period and at that time Mayne still owns Allamanda Hospital, Mayne will:
 - (i) at the commencement of the negotiations with that Health Fund advise that Health Fund that it may elect to negotiate a separate agreement with Allamanda Hospital from the agreement which will be negotiated in respect of Mayne's other hospitals in Queensland;

- (ii) if a Health Fund elects to negotiate a separate agreement in respect of Allamanda Hospital, Mayne will negotiate in good faith in respect of a separate agreement.
- (d) If any Hospital Purchaser Provider Agreements with a Health Fund fall for renegotiation in Victoria during the Undertaking Period and at that time Mayne still owns any of Mitcham Hospital, Northpark Hospital or South-Eastern Hospital, Mayne will:
 - (i) at the commencement of the negotiations with that Health Fund advise that Health Fund that it may elect to negotiate a separate agreement for any or all of Mitcham Hospital, Northpark Hospital or South-Eastern Hospital, from the agreement which will be negotiated in respect of Mayne's other hospitals in Victoria;
 - (ii) if a Health Fund elects to negotiate a separate agreement in respect of any or all of Mitcham Hospital, Northpark Hospital or South-Eastern Hospital, Mayne will negotiate in good faith in respect of any separate agreements.

4. Force Majeure

4.1 No Liability

Mayne will not be liable for any failure to perform any obligation under this Undertaking if the failure is due to Force Majeure.

4.2 Notice to Commission

If Mayne is by reason of Force Majeure unable to perform an obligation under this Undertaking, Mayne will:

- (a) as soon as practicable and in any event within 30 days, notify the Commission of the cause and extent of non-performance and the date of commencement of Force Majeure;
- (b) negotiate in good faith with the Commission a means to remedy or abate the Force Majeure.

5. Notification

Mayne will give written notice to the Commission of the following matters as soon as practicable and in any event within 30 days after the relevant occurrence:

- (a) the Effective Date;
- (b) the sale of AHC's interest in Assets of Allamanda Hospital, Mitcham Hospital, Northpark Hospital and South Eastern Hospital;
- (c) the commencement and termination or abatement of the Force Majeure;
- (d) all other matters required to be notified to the Commission under this Undertaking.

6. Subsidiaries

This Undertaking is given by Mayne on its own behalf and on behalf of all subsidiaries in which it holds at least 50.1% of the voting shares.

7. Confidentiality

7.1 Public Inspection

- (a) Subject to clause 7.1(b), Mayne acknowledges that the Commission will make this Undertaking available for public inspection.
- (b) The Commission will not make Annexure A to this Undertaking available for public inspection.

7.2 Reference to Undertaking

Mayne acknowledges that the Commission will from time to time publicly refer to this Undertaking except for the terms of Annexure A.

7.3 No Derogation

Mayne further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the proposed acquisition and conduct to which this undertaking relates.

7.4 Confidentiality Obligations

The Commission will not, save for the purposes of enforcement action under Section 87B of

the Trade Practices Act, or any other legal obligation, publish or disclose:

- (a) Annexure A to this Undertaking; or
- (b) the particular terms of any arrangements or contracts entered into in accordance with this Undertaking.

8. Provision of Information

The Commission may, at any time during the Undertaking Period request information from Mayne which the Commission reasonably requires for the purpose of monitoring this Undertaking. Mayne will comply with any such request within 10 Business Days of receipt or such other period of time as may be agreed to by the Commission.

In witness of these undertakings and its agreement, the Common Seal of Mayne Nickless Limited (ACN 004 073 410) was hereunto affixed by authority of the Board of Directors in the presence of:



29 January 2001

Date

[Handwritten signature]

Signature of Director

[Handwritten signature]

Signature of Secretary/other Director

Peter John Smokey

Name of Director in full

JOHN W. PRIESTLEY

Name of Secretary/other Director in full

Accepted by the Australian Competition and Consumer Commission pursuant to Section 87B of the Trade Practices Act 1974.

[Handwritten signature: Allan Fels]

Professor Allan Fels
Chairman

29 January 2001

Date

Confidentiality granted.