

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION GIVEN UNDER SECTION 87B**

**BY**

**RELYT PTY LTD (ACN 066 629 856)**

**&**

**S&S THOMSON INVESTMENTS PTY LTD (ACN 071 194 717)**

**PERSONS GIVING UNDERTAKING**

- 1) This undertaking is given to the Australian Competition and Consumer Commission ('the Commission') by Relyt Pty Ltd (ACN 066 629 856) of 20 Griffith Street, Everton Park in the State of Queensland and S&S Thomson Investments Pty Ltd (ACN 071 194 717) of 24 Alligator Creek Road, Alligator Creek, Townsville in the State of Queensland under section 87B of the *Trade Practices Act 1974* ('the Act').

**BACKGROUND**

- 2) Relyt Pty Ltd ("Relyt") and S&S Thomson Investments Pty Ltd (S&S) are both incorporated in Queensland. Together, Relyt and S&S own the used vehicle dealerships trading under the business names Dollar Wheels, Lone Pine Wholesale Cars and NQ Capital Autos ("the Dealerships").
- 3) The Dealerships carry on the business of purchasing and reselling used motor vehicles to the general public in the locality of Townsville, North Queensland.
- 4) The Dealerships, together with a fourth used vehicle dealer, Willows Auto Mart (owned by Racehub Pty Ltd) promote their businesses by among other means, joint advertising under the registered trade mark of Q.P.R. Auto Group ("QPR").
- 5) Mr David Tyler was at all material times a Director of Relyt and the manager of Dollar Wheels.
- 6) In or around August 1999, David Tyler, on behalf of Relyt and S&S, provided instructions to WIN Television in Townsville to produce and broadcast a television advertisement ("the Advertisement") promoting the Dealerships under the banner of QPR. At this time, David Tyler provided a draft transcript for the Advertisement
- 7) In the two week period commencing on 5 September 1999, WIN Television Townsville, in accordance with the instructions provided by David Tyler on behalf of Relyt and S&S, broadcast the Advertisement on approximately 53 occasions. The Advertisement was broadcast at the times identified in the WIN Booking Schedule attached at **annexure A**.
- 8) The Advertisement promoted the theme of "beat the taxman" referring to the effect the introduction of the Goods and Services Tax would have on the prices of used vehicles.

The Advertisement was structured to compare scenario's both after the introduction of the GST and presently by presenting two skits involving a used car salesperson and a potential customer. The Advertisement also involved a narrator. The transcript of the Advertisement is attached at **annexure B**.

- 9) On 8 October 1999 the Commission wrote to Relyt, S&S and David Tyler alerting those parties to the Commission's position that the Advertisement was potentially misleading contrary to section 52 of the Act or may have constituted a false representation under section 53(e) of the Act.
- 10) In particular, the Commission informed Relyt, S&S and David Tyler of its views that the representations in the Advertisement gave the clear impression that the price of used vehicles will increase as a result of the introduction of the GST.
- 11) However, the Commission's understanding is that from 1 July 2000 under *A New Tax System Act 1999*:
  - i) used vehicle dealers selling used motor vehicles will generally be able to claim input tax credits on used vehicles purchased for resale;
  - ii) the removal of the 22% wholesale sales tax and the imposition of the 10% GST on **new** motor vehicles will result in a fall in the price of new vehicles. This will result, in the short term, in a corresponding fall in the price of **used** motor vehicles; and
  - iii) further, in the longer term, lower **new** motor vehicle prices may result in a subsequent fall in demand for **used** motor vehicles and a corresponding fall in the price of **used** motor vehicles.

The Commission believes the net effect of these changes to be, in general, a likely overall reduction in the price of used vehicles.
- 12) For the reasons described at paragraph 11 above, the Commission was of the view that representations that imply that the price of used vehicles would increase as a result of the New Tax System changes were likely to be false or misleading, in contravention of sections 52 and 53(e) of the Act.
- 13) After being informed by the Commission of the possible contravention of section 52 and section 53(e) in respect of the Advertisement, Relyt and S&S have undertaken to cease the use of the Advertisement or to make representation which might be interpreted as stating or implying that the price of used vehicles will increase as a result of the introduction of the GST. Relyt and S&S have also agreed to the publication of corrective advertisements and the implementation of a trade practices compliance program.
- 14) In general, the Commission is of the view that corrective advertisements are most appropriately made in the same medium and with equal prominence as the original advertisement or representation. However, in the circumstances surrounding this matter, the Commission believes the newspaper corrective advertisements referred to at paragraph 16(iii) below provide an acceptable and effective means of correcting the original representations.

## COMMENCEMENT OF UNDERTAKING

15) This undertaking comes into effect when:

- (i) the undertaking is executed by Relyt and S&S; and
- (ii) the Commission accepts the undertaking so executed.

## UNDERTAKINGS

16) Relyt and S&S give the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*:-

### *Conduct Undertakings*

- i) Relyt and S&S will refrain from causing to be published or broadcast any advertisement or representation which states or implies that the imposition of the GST will result in the price of used vehicles in general increasing in any newspaper or other media; and
- ii) Relyt and S&S will not make representations in relation to the likely increase in the price of used vehicles where it does not have reasonable grounds for making the representations.

### *Corrective Advertisement Undertaking*

- iii) Relyt and S&S will, at their own expense, place corrective advertisements ('the Corrective Advertisements') in *The Townsville Bulletin* in the next available editions after the commencement of the undertaking, in the same terms, font size, form, design and content of **annexure C**.
- iv) The Corrective Advertisements will be published as follows:
  - (a) on or before page 19 in a Saturday edition;
  - (b) within the Saturday edition lift-out titled *Townsville Bulletin Cruise Control*;
  - (c) on or before page 11 in a Monday edition; and
  - (d) on or before page 19 in a Wednesday edition.
- v) The Corrective Advertisements will:
  - (a) be no less than 15cm in width by 15cm in depth; and
  - (b) be located on an odd numbered page.

***Trade Practices Compliance Program***

- vi) Relyt and S&S will each implement a trade practices compliance program ('the Program') in accordance with **annexure C**.

**ACKNOWLEDGMENTS**

- 17) Relyt and S&S acknowledge the Commission will make this undertaking available for public inspection.
- 18) Relyt and S&S further acknowledge that the Commission will, from time to time, publicly refer to this undertaking.
- 19) Relyt and S&S acknowledge and accept that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct of Relyt and S&S.
- 20) Relyt and S&S further acknowledge that the compliance program(s) as in force from time to time will be held with this undertaking on the public register.

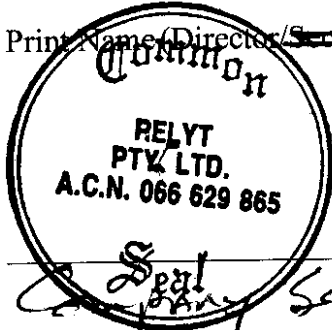
Signed on behalf of RELYT PTY LTD by

DAVID GERALD TYLER \_\_\_\_\_ 15/11/99

Print Name (Director/~~Secretary~~)

Signature

Date



~~Print Name (Director/Secretary)~~

~~Signature~~

Date

15/11/99

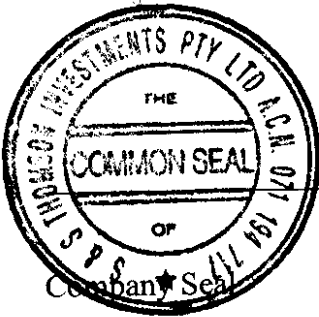
Signed on behalf of S&S THOMSON INVESTMENTS PTY LTD by

Scott Steel Thomson \_\_\_\_\_ 15/11/99

Print Name (Director/~~Secretary~~)

Signature

Date



15/11/99

Date

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974.

\_\_\_\_\_  
*(Handwritten signature)*

(Professor Allan Fels)

Chairperson

This 27 day of November 1999

Annexure A

WIN Television Townsville Booking Schedule

WIN TELEVISION		WIN BOOKING SCHEDULE												
Client	DOLLAR WHEELS	Client No	DW23	Market	TSV					WIN Television Qld Pty Ltd 8 Cross Street Mundingburra Queensland 4812 (A.C.N. 000 162 854)				
Agency	DIRECT	Agency No		Sales Executive	TRUDY WILSON									
Product	QPR	Book No		Phone	4729 4899									
Contact	DAVE TYLER	Order No		Fax	4729 4809									
Date	27-Aug-99													
Week comm	Program	Zone	No.	Dur.	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Rate	Total	Material
5.9.99	THE FOOTY SHOW	1100-1200	2	30	2									
	KICK OFF	1200-1300	1	30	1									
	WIN NEWS	1800-1830	1	30		1								
	TODAY	0700-0900	1	30			1							
	NIGHTLINE	2230-2300	1	30							1			
	THE MICK MOLLOY SHOW	2130-2230	3	30							3			
	ENTERTAINMENT TONIGHT	1500-1530	7	30		1	2	1	2	1				
	OUR CENTURY/OUR COUNT	1830-1930	1	30	1									
	HOOKEO ON WATER	1730-1800	1	30							1			
	BONUS	ROS	7	30		1	1	1	1	1	1			
12.9.99	TODAY	0700-0900	3	30			2							
	THE FOOTY SHOW	1100-1200	2	30	2									
	WIN NEWS	1800-1830	1	30		1								
	KICK OFF	1200-1300	1	30	1									
	NIGHTLINE	2230-2300	1	30							1			
	ENTERTAINMENT TONIGHT	1500-1530	7	30		1	2	1	2	1				
	THE MICK MOLLOY SHOW	2130-2230	3	30							3			
	HOOKEO ON WATER	1730-1800	1	30							1			
	OUR CENTURY/OUR COUNT	1830-1930	1	30	1									
	BURKES BACKYARD	1930-2030	1	30							1			
	BONUS	ROS	7	30		1	1	1	1	1	1			
<b>Total spots</b>												<b>53</b>		
<b>Note</b>												<b>This does not include production</b>		
<b>Authorised by:</b>														
<b>Capacity of Signatory</b>														
<b>Date:</b>														
												<b>\$2,070.00</b>	<b>Total cost</b>	

All programmes subject to change without notice  
 All bonus spots placed at stations discretion subject to availability  
 Min. 7 days notice must be given for whole (or part thereof) cancellations

## Annexure B

## Transcript of Advertisement

## VISION

Customer and Salesman  
looking over car in yard

CU shot of customer with  
shoulders of salesman

mid shot - Salesman  
Customer looks disappointed

Mid shot of Dave to camera  
in yard

Customer with salesman in  
yard

CU Salesman

Camera zooms out to customer  
looks very happy

CU customer

Dave to camera - wide shot  
of yard salesman and  
customer in b'ground -  
they're shaking hands and  
then customer gets into car

Dave to camera - customer  
drives car past Dave and  
waves goodbye -

cg over above shot  
Great Savings Today

Full screen Ext's as per  
audio  
cg: Charters Towers Rd

cg: Ross River Rd

## AUDIO

Dave's voice - 2secs  
Imagine this - it could be  
happening in the near  
future.

Customer - 1.5secs  
That seems a lot?

Salesman - 2.5secs  
That price includes the GST!

Dave - 2secs  
At The QPR Auto Group today.

Customer - 1.5secs  
Is that the full price?

Salesman - 3secs  
Absolutely - there is no

sales tax on used cars!

Customer - 1secs  
I'll take it!

Dave - 7secs  
Beat the tax man today - buy  
a quality used vehicle from  
The QPR Auto Group and pay  
no tax on your purchase!

Dave - 8secs  
GST means -

great savings today -

at the QPR Auto Group - Lone  
Pine, Dollar Wheels, NQ  
Capital Autos

and Willows Auto Mart.

**Annexure C****Corrective Advertisement****CORRECTIVE ADVERTISING****An apology from the QPR Auto Group****[INSERT QPR AUTO GROUP LOGO]**

In September this year we ran a number of television advertisements on WIN Television.

The advertisements were about the effects of the GST on the price of used cars. The claim behind the advertisements was that the prices of used cars would increase as a result the GST and as such, consumers should buy now 'to beat the taxman'.

The Australian Competition and Consumer Commission has raised concerns that the advertisements may have misled consumers. Their reason is that, while the true effect of the GST is not yet known, the effect of the GST on used cars may be to lower prices.

This is because while used vehicles sold after 1 July 2000 will attract a GST component, the removal of the wholesale sales tax on **new** cars is likely to result, in the short term, in a corresponding fall in the price of **used** cars which may well negate any direct GST effect. It is also possible that cheaper **new** cars will see the demand for **used** cars fall and so exert more downward pressure on their price.

The QPR Auto Group would like to apologise to anyone misled by the advertisement.

As a result of the ACCC's concerns, we have agreed not to repeat the Advertisements and to place this apology. We will also implement a trade practices compliance program to ensure our advertising won't mislead consumers in the future.



This advertisement has been placed by Relyt Pty Ltd and S&S Investments Pty Ltd as part of undertakings provided to the ACCC in relation to possible breaches of the Trade Practices Act.



## **Annexure D**

### **Trade Practices Compliance Program**

Within three months of the commencement of the undertaking, Relyt and S&S will create and maintain at their own expense, a trade practices compliance program (“the Program”). In summary the Program will:

#### **General**

- 1) Comply with Australian Standard on Compliance Programs AS 3806-1998 and be tailored to suit the circumstances of Relyt and S&S.
- 2) Demonstrate commitment to a policy of compliance and embed a culture of compliance throughout the organisation(s).
- 3) Analyse and respond to trade practices matters resulting in this undertaking.
- 4) Identify risk areas for trade practices breaches and develop systems to eliminate or minimise these risks.
- 5) State that the company(s) will take action internally against those responsible for breaches and will not indemnify them.
- 6) Provide practical and verifiable training for all relevant staff and management so that breaches and potential breaches may be prevented or otherwise detected, referred and acted upon.

#### **Specifics**

In particular the Program will include the following steps:

- 7) Commitment
  - i) Form a compliance committee of the Board or ensure that compliance matters are standing items on the Audit Committee and/or Board meetings.
  - ii) Appoint a Compliance Manager or Senior Manager with overall responsibility for compliance systems.
  - iii) Implement adequate procedures to check for trade practices compliance.
  - iv) Ensure that compliance procedures are understood by staff and other relevant parties eg agents, distributors and advertising representatives.
- 8) Policies and Procedures
  - i) Produce a written policy of commitment to compliance and articulate how this will be

carried out; set in place procedures so that the policy is well understood throughout the company; ensure procedures are laid down to assess compliance against predetermined objectives and assessment criteria.

#### 9) Management Responsibility

- i) Detail the process involved in establishing, implementing and maintaining the compliance program and the roles and responsibilities of management, staff and other stakeholders.
- ii) Ensure that line managers are responsible for compliance in their immediate area.

#### 10) Resources and Authority

- i) Ensure that the senior executive(s) responsible for compliance systems has:
  - a) authority, recognition and support within the organisation;
  - b) access to all levels in the organisation to ensure compliance;
  - c) overall responsibility for design, integrity and updating of the program; and
  - d) access to the board when required.
- ii) Ensure that staff have access to the necessary materials including compliance manuals and training, reference material and databases.
- iii) Ensure that any external compliance service providers have the resources and expertise to carry out the required tasks.

#### 11) Continuous Improvement

- i) Put in place procedures to ensure the Program has regular ongoing reviews.

#### 12) Operating Procedures for Compliance

- i) Integrate compliance considerations into:
  - a) computer systems;
  - b) forms;
  - c) contracts;
  - d) administrative procedures;
  - e) financial evaluations; and
  - f) management performance evaluations (line & senior)

#### 13) Training

- i) Develop and execute a practical and easily understood compliance training system throughout Relyt and S&S. Training will be:
  - a) integrated into induction courses;
  - b) reviewed every six months;
  - c) participatory;

- d) verifiable by third parties;
- e) framed to reflect areas or risk;
- f) integrated into line and senior management development.

#### 14) Complaints handling system

- i) Implement a visible and accessible complaints handling system which complies with Australian Standard AS 4269.

#### 15) Record Keeping

- i) Keep an accurate record of compliance failures and complaints and of the rectification of such failures and complaints.

#### 16) Employee Compliance

- i) Develop a disciplinary policy for breaches of the Act by employees and ensure the policy is widely disseminated.
- ii) Ensure that compliance is integrated into performance reviews for employees.

#### 17) Identification and Rectification

- i) Develop a system to identify and classify compliance failure so that systemic and recurring problems are rectified.

#### 18) Reporting

- i) Ensure that compliance problems are rapidly reported to the Compliance Manager.

#### 19) Monitoring and Review

- i) Introduce a system to monitor and review the effectiveness of the compliance program.

#### 20) Accountability

- i) Ensure that the Compliance Manager is accountable to the Board for compliance issues.

#### 21) Review of the Program

Relyt and S&S will cause, at their own expense, an independent audit of its compliance program to be conducted twelve months from the date of the implementation of the Program. The audit will be carried out by an independent external auditor with appropriate experience in trade practices law. The auditor should review and report on:

- i) Relyt's and S&S's adherence to the undertaking;
- ii) the implementation of the compliance program and the achievement of its objectives over the preceding twelve months; and

iii) recommend changes to the compliance program that may be necessary to ensure achievement of its objectives.

22) Relyt and S&S will implement the recommendations of the audit referred to above within two calendar months of the provision of the audit.

**Duration**

23) The Program will remain in place for at least three years following its implementation.

**The Commission**

24) Relyt and S&S will provide a copy of the Program to the Commission within two weeks of its implementation.