



TRADE PRACTICES ACT 1974

UNDERTAKING TO THE TRADE PRACTICES

COMMISSION GIVEN FOR THE PURPOSES OF

SECTION 87B

BY

LYSCARD PTY LTD

ACN 002 381 179

BACKGROUND

1. Lyscard Pty Ltd (ACN 002 381 179) ("Lyscard") is involved in business activity which includes the sale and marketing throughout Australia of Collier Encyclopaedia and books ("Collier books").
2. Lyscard is an independent sales distributor for Family Educational Publishers Pty Ltd and PF Collier Australia Pty Ltd and is authorised to sell Collier books.
3. Between July 1993 and October 1993 ("the period"), Patrick Phelan, an agent for Lyscard, sold Collier books to certain persons residing in the remote

communities of Ngukurr, Borroloola, Naiyue Nambiyu (Daly River), Elliot/Tenant Creek and Alice Springs ("the complainants").

4. The complainants are listed in the Schedule attached to this Undertaking.

5. Following an investigation by the Trade Practices Commission ("the Commission"), the Commission reached the view that Lyscard had contravened the *Trade Practices Act 1974* ("the Act") in that Lyscard, by its agent Patrick Phelan, had engaged in unconscionable and misleading or deceptive conduct and had made false representations as to gifts in respect of the sale of Collier books. The Commission considers that Lyscard contravened sections 51AB, 52, 53(f) and 54 of the Act by:
 - (a) taking advantage of Lyscard's stronger bargaining position in relation to the complainants who were in disadvantaged circumstances as persons from non-English speaking backgrounds living in remote communities with limited education, limited ability to understand written and spoken English and limited exposure to legal dealings and high pressure salesmen.

 - (b) misleading the complainants into believing that no cooling off period applied, that failure to purchase the books would cause harm to the education of the complainants children and that Collier books would be good for the complainants' children.

 - (c) representing that money boxes would be provided as a gift with the sale of the Collier books when they were not so provided.

6. In late March 1995 the Commission brought to the attention of Lyscard its view that the conduct referred to in paragraph 5 above contravened sections 51AB, 52, 53(f) and 54 of the Act. The Commission and Lyscard subsequently discussed the Commission's view in April 1995.

7. Lyscard admits that the conduct referred to in paragraph 5 above contravened the Act and has now ceased such conduct.

UNDERTAKINGS

Future Conduct

8. Lyscard hereby undertakes to the Commission, for the purposes of section 87B of the Act, that it and all of its subsidiaries shall not in trade or commerce, engage in conduct that is unconscionable, misleading or deceptive in the sale of books in Australia.

Refund and Recovery

9. Lyscard hereby undertakes to the Commission, for the purposes of section 87B of the Act, that it and all of its subsidiaries:
 - (a) shall:
 - (i) take all reasonable steps to locate and attend each of the complainants to ascertain (in accordance with the advice of the independent representative referred to in paragraph 10) whether he or she wishes to be refunded the monies paid by him or her to Lyscard;
 - (ii) refund to each of those complainants who are ascertained, in accordance with the preceding sub-paragraph, to be wishing to receive a refund, all monies paid by those complainants to Lyscard;

- (iii) not take any action to seek the return of any of the Collier books from any of the complainants;

- (iv) not commence, nor cause nor permit to be commenced, any proceedings arising from or in respect of the complainants' purchase of Collier books or any agreement or collateral agreement relating thereto ("recovery proceedings") against any of the complainants or their successors or assigns for recovery of any money or for damages or otherwise ;

- (v) in the event that recovery proceedings have been commenced, immediately discontinue those recovery proceedings and reimburse the complainant all expenses, including legal costs on a solicitor and own client basis, incurred by the complainant in respect of the recovery proceedings;

- (vi) indemnify the complainant against all proceedings arising from or in respect of the complainant's purchase of Collier books or any agreement or collateral agreement relating thereto, that may be brought by third parties, including any claims for costs, and shall reimburse the complainant all expenses, including legal costs on a solicitor and own client basis, incurred by the complainant in respect of recovery proceedings brought by third parties;

or

(b) shall

- (i) repay to each complainant all monies paid by that complainant to Lyscard;
- (ii) not take any action to seek the return of any of the Collier books from any of the complainants and so advise each of the complainants in writing;
- (iii) not commence, nor cause nor permit to be commenced, any proceedings arising from or in respect of the complainants' purchase of Collier books or any agreement or collateral agreement relating thereto ("recovery proceedings") against any of the complainants or their successors or assigns for recovery of any money or for damages or otherwise;
- (iv) in the event that recovery proceedings have been commenced, immediately discontinue those recovery proceedings and reimburse the complainant all expenses, including legal costs on a solicitor and own client basis, incurred by the complainant in respect of the recovery proceedings;
- (v) indemnify the complainant against all proceedings arising from or in respect of the complainant's purchase of Collier books or any agreement or collateral agreement relating thereto, that may be brought by third parties, including any claims for costs, and will reimburse the complainant all expenses, including legal costs on a solicitor and own client basis, incurred by the complainant in respect of recovery proceedings brought by third parties;

10. The attendance by Lyscard, referred to in paragraph 9(a) , is to be done in conjunction with an independent representative :

- (a) who is, in each case, approved by the Commission;
 - (b) whose fees and costs for attending the complainant are to be paid by Lyscard; and
 - (c) whose function is to advise each complainant of his or her rights and options.
11. (a) If Lyscard has attempted, under paragraph 10(a), to locate a complainant and been unable to do so, Lyscard shall so advise the Commission in writing, setting out all the steps taken and seeking a direction from the Commission as to any further steps the Commission requires it to take. Lyscard shall take such further steps as may be directed by the Commission.
- b) If the Commission does not, within 30 days of its receipt of Lyscard's advice under the preceding paragraph, direct that further steps be taken or if Lyscard is still unable to locate a complainant after taking such further steps as the Commission directs, then Lyscard's obligation to locate and attend that complainant shall cease and Lyscard shall only be obliged to refund moneys to that complainant if a request for same is made by that complainant
 - (c) Where Lyscard is unable to locate a complainant, the undertakings given in subparagraphs 9(a) (iii), (iv),(v) and (vi) shall continue to apply as far as is possible.

Compliance Programs

12. The Companies hereby further undertake to the Commission, for the purposes of section 87B of the Act, that:

(a). Within two months of the signing of this Undertaking, they must develop and submit for consideration by the Commission, a Trade Practices Compliance Program (“the Program”) with the following characteristics and attributes:

(i) Aim

To create, within Lyscard, a culture of compliance with the Act, and to prevent, so far as is reasonably possible, any contravention of the Act by Lyscard and all its subsidiaries or by the Directors, employees, agents or sub-agents of any of them.

(ii). Policy

The formal adoption, or reaffirmation, by Lyscard, of a policy of strict compliance with both the letter and spirit of the Act within Lyscard and the adoption, or reaffirmation and enforcement of sanctions against any Director, employee, agent or sub-agent who is knowingly or recklessly concerned in a contravention of the Act.

(iii) Compliance Infrastructure

The appointment of an appropriately qualified senior executive of Lyscard as a compliance officer with overall responsibility for compliance with the Act.

(iv). Coverage

The Program to cover all Directors, employees agents and sub-agents of Lyscard whose duties could result in them being involved in conduct that might breach the Act (“relevant staff”).

(v). Education

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

- A. Relevant staff can avoid obvious contraventions and can identify more complex potential Trade Practices problems for referral to the appropriate person in Lyscard's compliance infrastructure; and
- B. Persons with responsibilities within Lyscard compliance program, and in particular the compliance officer/s, can effectively carry out those responsibilities including obtaining legal advice if necessary.

- (b). Lyscard must modify the program to incorporate in full all changes thereto that the Commission may notify in writing to Lyscard, provided that:

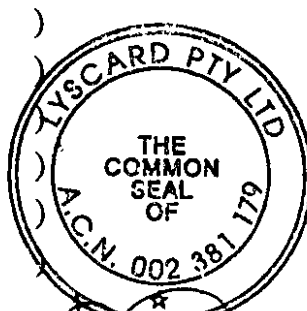
- (i) such changes are notified by the Commission to Lyscard within 30 days of Lyscard submitting the Program, or such longer period as the parties may mutually agree; and
 - (ii) such changes are consistent with the intent and requirements of paragraph 12(a).
- (c) Lyscard must implement the Program, including any changes that may be incorporated therein pursuant to the preceding paragraph, within 60 days of submitting the Program to the Commission or within 30 days of receiving the Commission's notification of changes required to the Program pursuant to the preceding paragraph, whichever is the later.
- (d) For 5 years after implementation of the Program, Lyscard must, one year after commencement of the implementation of the Program, and annually thereafter, provide a report to the Commission on Lyscard's activities and performance over the preceding year, in relation to the implementation of the Program.
- (e) If the Commission so requires, Lyscard must arrange, at its expense, a meeting between a representative cross section of its staff and representatives of the Commission to enable the Commission to determine the effectiveness of the Program, provided that:
- (i) such meetings shall not be required at less than 6 monthly intervals from the time of implementation;
 - (ii) the number and positions of Lyscard's representatives required to attend will be as advised by the Commission but will be no more than 20 persons;

- (iii) the Commission shall give 30 days notice in writing of its requirement for a meeting;
 - (iv) the time, duration and venue of the meeting shall be as determined by mutual agreement or, failing such agreement within 30 days of the Commission requiring a meeting, as determined by the Commission.
- (f) If the Commission notifies Lyscard in writing that it considers that Lyscard's performance in relation to the implementation of the Program is inadequate in any respect, Lyscard must take immediate steps to rectify the inadequacies in performance identified by the Commission and shall keep the Commission fully informed of steps so taken.

ACKNOWLEDGMENTS

- 14. Lyscard acknowledges that the Commission will place and hold this undertaking on the public register.
- 15. Lyscard acknowledges that the Commission may from time to time publicly refer to this undertaking.
- 16. Lyscard acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct .
- 17. Lyscard acknowledges that the Program will be held with this undertaking on the public register.

IN WITNESS of this Undertaking
and its agreement the common seal of
LYSCARD PTY LTD (ACN 002 381 179)
was hereunto affixed in
by authority of the Board of Directors
in the presence of:



[Handwritten Signature]
Secretary/Director

[Handwritten Signature]
Director

This 5th day of JUNE 1995 ("the date of this Undertaking")

ACCEPTED BY THE TRADE PRACTICES COMMISSION PURSUANT TO
SECTION 87B OF THE TRADE PRACTICES ACT 1974.

[Handwritten Signature]
Professor Allan Fels
Chairman

This 21st day of JUNE 1995