

**TRADE PRACTICES ACT 1974****UNDERTAKING TO THE TRADE PRACTICES
COMMISSION GIVEN FOR THE PURPOSES OF
SECTION 87B****BY****WYNN'S AUSTRALIA PTY LIMITED
A.C.N. 000 370 150****BACKGROUND**

Wynn's Australia Pty Limited ("Wynn's") has offered for sale and sold in Australia a motor vehicle warranty product, called an Extended Warranty ("the Warranty").

The Warranty Booklet expressly refers to the capacity to transfer. When the no claim period was introduced the Booklet did not make any reference to it. Upon seeking to transfer the warranty, the transferee was notified that he or she was precluded from making a claim for the first three months or 5000 kilometres from the date of the transfer. Since approximately June 1993, and prior to the consideration of the issue by the Trade Practices Commission, the existence of the no claim period has been noted in the transfer form attached to most Booklets.

The Trade Practices Commission alleges that the omission of the no claim period has resulted in contraventions of the *Trade Practices Act 1974* ("the Act"). Wynn's concedes that it is reasonable for the transferee to rely on the Warranty Booklet as accurately expressing the terms of the Warranty. The Warranty Booklet does not accurately express the terms of the Warranty. The Commission alleges that the non-disclosure of the no claim period in the Warranty Booklet breaches section 52 of the Act, by misleading or deceiving the transferee that the transferee possesses the same rights under the Warranty as the seller of the vehicle. The Commission further alleges that failure to mention the no claim period constitutes a false or misleading representation concerning the exclusion or effect of the Warranty, in breach of section 53(g) of the Act.

Wynn's has acknowledged that its conduct, in offering for sale and selling the Warranty in the manner described, has resulted in contraventions of the Act, and has agreed to give the following undertakings pursuant to section 87B of the Act.

UNDERTAKINGS

Wynn's Australia Pty Limited ("Wynn's") undertakes, for the purposes of section 87B of the *Trade Practices Act 1974*, on behalf of itself and any and all subsidiaries of Wynn's Australia Pty Limited and any and all business entities controlled by Wynn's Australia Pty Limited or its subsidiaries, that :

- (a) from the date of Wynn's giving this undertaking, Wynn's will waive the no claim period for any Warranty which has been or will be transferred, whether or not the no claim period was printed on the transfer slip attached to the Warranty Booklet;
- (b) the Warranty Booklet will be amended and reprinted, by no later than 18 July 1994; the amended Warranty Booklet will contain no reference to the no claim period, and no such condition will be applied, from this date forward;
- (c) Wynn's will contact their distributors by letter, once the Warranty Booklets have been reprinted and in any event no later than 1 August 1994; Wynn's will instruct that all Warranty Booklets containing reference to the no claim period be removed from circulation, and be replaced by the amended Warranty Booklets; Wynn's will forward a letter to the distributors in the form contained in Attachment A, outlining the circumstances and setting out the arrangements provided for in these undertakings;
- (d) Wynn's will correspond with transferees since the introduction of the no claim period currently noted on Wynn's files and data base seeking notification from any who feel disadvantaged by the no claim period;

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- (e) Wynn's will place advertisements in the form and comprising the text set out at Attachment B; the final draft for publication will be submitted to the Commission for approval; the advertisements will appear in the following newspapers, commencing ~~on~~ ^{within 2 weeks of the date of these undertakings} ~~July 1994~~ and followed by 2 inserts over the following 2 weeks; the word "Wynn's" will appear at the top of the advertisement in the form in which it appears on Wynn's letterhead, as set out at Attachment C; the advertisements will contain the Trade Practices Commission logo, and will contain wording that indicates the advertisements were placed at the bidding of the Trade Practices Commission; the advertisements will appear in the "Early General News" sections of the following newspapers, and will be no less than 15 centimetres in depth by 2 columns in width (approximately 7.4 centimetres) -

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<u>CITY</u>	<u>NEWSPAPER</u>
Hobart	Mercury
Melbourne	Herald Sun
Sydney	Telegraph Mirror
Brisbane	Courier Mail
Perth	West Australian
Adelaide	Advertiser

- (f) should any transferee respond to the correspondence or the advertisements alleging disadvantage by the application of the no claim period to a claim the transferee may have made or wished to make, the transferee will be compensated if the claim otherwise complies with the terms of the Warranty;
- (g) Wynn's will disclose to the Commission the terms of any and every such compensation agreement reached;
- (h) each reparatory measure outlined in these undertakings will be reviewed by Wynn's solicitors, who will report to the Commission at least quarterly between the date of the Undertakings and the first anniversary thereof on whether the measures have been completed.

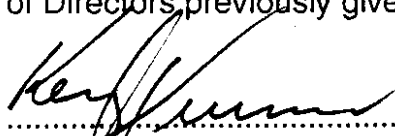
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In addition to giving these undertakings, Wynn's agrees that the Commission may, for the purposes of encouraging compliance with the Act, publicise where, when and to whom it wishes :

- (i) Wynn's acknowledgment that it has contravened the Act; and
- (ii) the contents of these undertakings.

IN WITNESS OF THESE UNDERTAKINGS AND ITS AGREEMENT THE COMMON SEAL OF WYNN'S AUSTRALIA PTY LIMITED was hereunto affixed by authority of the Board of Directors previously given in presence of

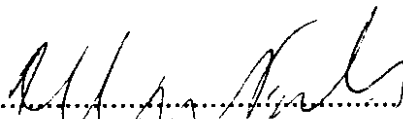



.....
Director


.....
Secretary

This *12th* day of *JULY* 1994

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


.....
(Professor Allan Fets)
Chairman

This *19th* day of *July* 1994

LETTER TO WYNN'S DISTRIBUTORS

There may have been circumstances in the past where the no claim period for the first 3 months/5 000 kilometres following transfer of a Warranty has been imposed when that condition was not clearly a term of the Warranty. Some Warranty holders may have been disadvantaged as a result of the imposition of the no claim period.

As it is our desire to always treat all of our Warranty holders fairly and consistently in accordance with the law, and following discussions with the Trade Practices Commission, we therefore advise that :

- * Effective immediately we will waive the application of the no claim period immediately for all Warranties.
- * We will run the attached advertisement in major metropolitan newspapers in an attempt to identify consumers who may have been disadvantaged by the imposition of the no claim period.

Please immediately request your Dealers to advise the Claims Department in Sydney on (02) 451 3444 of any incident related to this subject (for example, queries, complaints, or cases where you have informed customers of the no claim period) so that we can follow up to rectify.

We are currently printing new Warranty Booklets and we will give these to you for distribution in the near future. Once new Warranty Booklets are available, you must collect all out of date Warranty Booklets immediately and destroy them. You must ensure that only new Warranty Booklets are in circulation.

PUBLIC NOTICE
Wynn's

WYNN'S AUSTRALIA PTY. LTD. has been engaged in the provision of extended warranties for motor vehicles in Australia for many years.

Some time ago, Wynn's introduced a no-claim period of 3 months or 5000 kilometres following transfer of a warranty. This was in an attempt to encourage a purchaser of a second-hand vehicle which was subject to an existing Wynn's warranty to advise promptly that the warranty had been transferred.

The Trade Practices Commission has expressed concern to Wynn's that transferees have not been adequately informed regarding the existence and effect of the no-claim period.

Any consumer who feels disadvantaged by the application of the no-claim period, or who has any query about an extended warranty policy should phone (02) 451 3444 in order that Wynn's might reconsider any claims, past or present, to which the no claim period has been, or might be applied.

Wynn's has placed this advertisement at the request of the Trade Practices Commission.



**Trade
Practices
Commission**

ATTACHMENT C

Wynn's