



UNDERTAKING TO THE TRADE PRACTICES COMMISSION  
GIVEN FOR THE PURPOSES OF SECTION 87B

BY

IBM AUSTRALIA LTD  
ACN 000 024 733

**BACKGROUND**

IBM Australia Ltd ('IBM'), has offered for sale and sold, in Australia, rechargeable nickel metal hydride batteries upon which there appears a triangular symbol comprising three arrows chasing each other around a stylised version of the mobius loop.

Although there were no facilities available to Australian consumers for recycling these batteries at the time they were offered for sale and sold, their useful life, even under conditions of heavy use, is several years. IBM has made arrangements for the return to it of batteries for storage and subsequent recycling and these facilities will be available to Australian consumers when the need for recycling arises.

The Trade Practices Commission has claimed that the triangular symbol on the batteries would lead consumers in Australia to believe that after their useful life in the hands of a first consumer, the batteries will be able to be processed so that they may be reused in their present form by another consumer or their components will be able to be used in another product cycle. Further that, unless adequate arrangements for the recycling of

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batteries in this way are made by the time they are required, the triangular symbol would be misleading and deceptive in contravention of section 52 of the Trade Practices Act 1974 and would constitute a misrepresentation as to the performance characteristics and benefits of the products, in contravention of section 53(c).

The Commission and IBM agree that adequate arrangements for the recycling of nickel metal hydride batteries require that:

- (i) facilities be available, where the recycling processes can be effected, at the time that the charge on the batteries is exhausted;
- (ii) readily accessible collection and/or return arrangements be in place at the time that the charge is exhausted; and
- (iii) appropriate efforts be made by the company responsible for the marketing of the batteries, by the time that the charge is exhausted, to inform potentially affected consumers of the existence and availability of the relevant recycling facilities and collection and return arrangements.

IBM has agreed, without making any admission that its conduct constitutes a contravention of the Act, to give the following undertakings for the purpose of section 87B of the Act.



**UNDERTAKINGS**

IBM Australia Ltd ('IBM') undertakes, for the purposes of section 87B of the Trade Practices act 1974, on behalf of itself and any and all subsidiaries of IBM Australia Ltd and any and all business entities controlled by IBM Australia Ltd or its subsidiaries ('the IBM Group') that:

- (a) from the date of IBM giving these undertakings, the IBM Group will not, in trade or commerce, sell or distribute or otherwise make available rechargeable nickel metal hydride batteries displaying, on the batteries or on associated packaging, the triangular symbol comprising three arrows chasing each other around a stylised version of the mobius loop, which has appeared on rechargeable nickel metal hydride batteries sold by IBM, for use in IBM computer hardware products ('the recyclable symbol'), or any other symbol, wording, or mark which represents that the batteries are recyclable, unless:
- (i) at the time of the sale, distribution or making available, IBM believes, on reasonable grounds, that it will have available to it (in Australia or elsewhere) at the time when the batteries have reached the end of their useful lives, facilities for the recycling of the batteries;
- (ii) IBM has previously sent to any dealer, retailer or distributor to whom it makes available the



batteries, a notice in terms of Annexure A to these undertakings; and

(iii) IBM inserts information leaflets, in terms of Annexure C to these undertakings, with the sales packaging of new computer hardware products and new replacement rechargeable nickel metal hydride batteries; and

(b) from the date of IBM giving these undertakings, the IBM Group will not, in trade or commerce, represent in any way that any rechargeable nickel metal hydride battery which it sells or distributes or otherwise makes available is recyclable unless that battery can be sold, distributed or made available in accordance with undertaking (a) above; and

(c) IBM will recycle, or cause to be recycled (in Australia or elsewhere), all rechargeable nickel metal hydride batteries displaying on the batteries or on associated packaging the recyclable symbol or any other symbol, wording or mark which represents that the batteries are recyclable which are, or have been:

(i) sold by the IBM Group; and

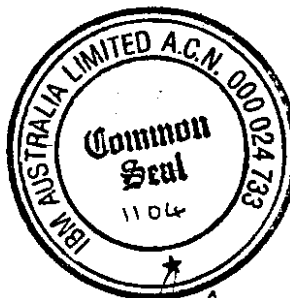
(ii) returned to the IBM Group.



For the purposes of these undertakings, a battery will be taken to have been recycled, if, subsequent to its initial manufacture, it has been processed, rather than by being recharged by an end user, so that it can be reused as a battery or so that its component parts or materials have been recovered with the intention that they will be used in the manufacture of batteries or other products.

It is a condition of these undertakings that any publicity given to them by the Commission which identifies IBM by name or otherwise shall mention that IBM denies it has contravened the Act and shall include the terms of these undertakings.

IN WITNESS OF THESE UNDERTAKINGS AND ITS AGREEMENT THE COMMON SEAL OF IBM AUSTRALIA LTD was hereunto affixed by authority of the Board of Directors previously given in the presence of:



*[Handwritten signature]*  
.....  
Director

*[Handwritten signature]*  
.....  
Secretary

This 13<sup>th</sup> day of July 1994

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

*[Handwritten signature]*  
.....  
(Professor Allan Fels)  
Chairman

This 20 day of July 1994

## Appendix A. Letter to Dealers, Distributors and retailers

15 February 1994

**\*\*NAME (NO FULL STOP AFTER MR/MRS/MS) eg. Mr A. W. James\*\***  
**\*\*COMPANY NAME (SHOULD BE IN FULL)\*\***  
**\*\*ADDRESS (NO PUNCTUATION IN ADDRESS)\*\***  
**\*\*SUBURB STATE POSTCODE (IN CAPITALS, 2 SPACES BEFORE & AFTER**

Dear IBM Business Partner,

As you are no doubt aware the demand for battery powered mobile computers has increased dramatically over the past two years and IBM is amongst the many suppliers in this field.

You may notice that the rechargeable battery in IBM's mobile personal computers bears a recycle symbol. This symbol, consisting of three arrows chasing each other in a triangular shape, generally means that the product on which it appears contains material which can be extracted and re-used in the manufacture of other products.

IBM Australia is arranging for the recycling of spent IBM batteries bearing this symbol. Instructions to our customers will be included with every product bearing the symbol. The instructions will inform them that they can return the spent battery, to battery- return participating dealers, or directly to IBM at the Rosebery facility in NSW.

We ask you to assist us with this environment programme, by indicating to us your willingness to participate by accepting customers' spent batteries. This should require little effort on your part, as IBM will arrange for the collection from you of any returned batteries.

The batteries will be stored at the Rosebery facility awaiting shipment overseas to a recycling plant, or recycled in Australia when a suitable recycling plant becomes available.

All of our business partners should be aware that we will upon request arrange for collection of batteries returned to them by our customers.

If you have any questions regarding this new process please contact your IBM representative.

Yours sincerely,



**BATTERY RECYCLING**

**IBM WILL ARRANGE TO RECYCLE THIS BATTERY WHEN IT REACHES THE END OF ITS USEFUL LIFE (I.E. WHEN IT CAN NO LONGER HOLD A CHARGE). JUST RETURN IT TO A PARTICIPATING DEALER, OR TO IBM AT 1-55 ROTHSCHILD AVENUE, ROSEBERY, NEW SOUTH WALES, AUSTRALIA. CALL IBM ON 008 XXX XXX FOR THE LOCATION OF YOUR NEAREST PARTICIPATING DEALER.**

**PLEASE KEEP THIS NOTICE WITH YOUR PRODUCT MANUAL AND WARRANTY DOCUMENTS SO THAT YOU KNOW WHAT TO DO WHEN YOU HAVE FINISHED WITH THE BATTERY.**

