

**TRADE PRACTICES ACT 1974**

**AND**

**COMPETITION AND CONSUMER ACT 2010**

Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B

by

**Advanced Lifestyle International Retail Pty Ltd**

ACN 128 888 531

**Persons giving this undertaking**

1. This undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by Advanced Lifestyle International Retail Pty Ltd ACN 128 888 531 (**ALI**) of 31 Bennet Avenue, Melrose Park, in the state of South Australia for the purposes of:
  - (a) section 87B of the Trade Practices Act 1974 (**the TPA**), as applied by Item 6 of Schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010*, for conduct engaged in by ALI prior to 1 January 2011; and
  - (b) section 87B of the *Competition and Consumer Act 2010* (**the CCA**).

**Background**

2. ALI is a retailer of a variety of 'Cycloidal Vibration Therapy' (CVT) products. CVT is a vibrating form of massage incorporated into a range of products, including electric handheld wands, cushions, chairs and beds (**the ALI Products**).
3. ALI promotes and sells the ALI Products predominantly to, but not limited to, senior citizens through sales presentations conducted in consumers' homes.
4. The ALI salesperson referred to in paragraphs 13 to 17 and 19.3 below (**the ALI Salesperson**) engaged in the conduct referred to in those paragraphs within the scope of the ALI Salesperson's actual or apparent authority as an agent of ALI, and therefore, by virtue of section 84(2) of the TPA, that conduct is deemed to have been engaged in also by ALI for the purposes of the TPA.

**The conduct**

*Misleading conduct due to failure to disclose the true purpose of the home visit*

5. From at least 18 February 2008 to on or about 14 October 2010, ALI, through its employees or duly authorised representatives, approached prospective customers by telephone and at shopping centres and made appointments to visit those customers in their homes by representing that ALI was offering a free in-home therapy treatment or massage service to help with various medical conditions and that the

service would be provided by a consultant trained in the relevant field (**the Home Visit Misrepresentations**).

6. At the time of arranging each home visit with prospective customers for a purported free in-home therapy treatment or massage service, ALI representatives did not inform consumers that:
  - 6.1. ALI was a retailer of ALI Products; or that
  - 6.2. the real and predominant purpose of the home visit was for an ALI salesperson to seek to negotiate and enter into a contract with the prospective customer for the supply of ALI Products (**ALI Contract**).
7. During each home visit ALI salespeople engaged in discussions and negotiations with consumers directed towards the making of an ALI Contract. On many occasions, these discussions resulted in consumers entering into an ALI Contract.
8. The ACCC considers that by making the Home Visit Misrepresentations and failing to disclose that the real and predominant purpose of each home visit was to negotiate and enter into ALI Contracts, ALI engaged in conduct, in trade and commerce, that was misleading or deceptive or that was likely to mislead or deceive in contravention of section 52 of the TPA.

#### *The No Cooling-off Misrepresentations*

9. Under the Door-to-Door Sales provisions in Part 3, Division 4 of the *Fair Trading Act 1989 (Qld)* (**the FTA**), if a consumer invites a supplier or dealer into their home for one purpose (such as a free therapy treatment or massage service) but the trader subsequently uses that visit for an undisclosed different purpose (such as to negotiate an ALI Contract), the invitation from the consumer is considered to be unsolicited. This means, pursuant to the FTA, a 10-day cooling-off period applies to any contract entered into between the consumer and the trader.
10. From March 2010 to on or about 14 October 2010, ALI representatives informed consumers who had initially been approached by an ALI representative in a shopping centre and who had subsequently entered into an ALI Contract that those consumers did not have the right to rescind an ALI Contract within the 10-day cooling-off period as provided under the FTA (**the No Cooling-off Misrepresentations**).
11. The ACCC considers that such consumers were entitled to rescind any ALI Contract entered into before the expiration of the 10-day cooling-off period because ALI representatives had misrepresented the purpose of the home visit, as described in paragraphs 5 to 8, and that in doing so ALI denied consumers the right to exercise their statutory rights and remedies.
12. The ACCC considers that by making the No Cooling-off Misrepresentations, ALI:
  - 12.1. engaged in conduct, in trade and commerce, that was misleading or deceptive or that was likely to mislead or deceive in contravention of section 52 of the TPA; and

- 12.2. in trade and commerce, in connexion with the supply or possible supply of the ALI Products made a false or misleading representation concerning the existence, exclusion or effect of consumers' rights or remedies under the FTA in contravention of section 53(g) of the TPA.

*The Government Approved Misrepresentations*

13. From at least 15 January 2010 to 14 October 2010, the ALI Salesperson made express or implied representations to the effect that ALI and/or the ALI Products or their efficacy were sponsored, approved or endorsed by the government (**the Government Approved Misrepresentations**), when this was not the case.
14. The ACCC considers that by the ALI Salesperson making the Government Approved Misrepresentations, ALI:
  - 14.1. engaged in conduct, in trade and commerce, that was misleading or deceptive or that was likely to mislead or deceive in contravention of section 52 of the TPA; and
  - 14.2. in trade and commerce, in connexion with the supply or possible supply of ALI Products falsely represented that ALI or the ALI Products had government sponsorship or approval that they did not have in contravention of section 53(c) and/or section 53(d) of the TPA.

*The Price Misrepresentations*

15. From at least 15 January 2010 to 14 October 2010, the ALI Salesperson made representations to consumers about the:
  - 15.1. quantum of deposits;
  - 15.2. quantum and number of repayments; and
  - 15.3. total price;that consumers were required to pay to purchase the ALI Products (**the Price Representations**).
16. The ACCC was concerned that:
  - 16.1. the Price Representations were made to consumers by the ALI Salesperson in a manner designed to mislead consumers as to the true price of the ALI Products that they were purchasing;
  - 16.2. it was not until after the home visit that consumers discovered that they were required to pay significantly more for the ALI Products under the ALI Contract than the price that the ALI Salesperson had informed them they would be required to pay; and
  - 16.3. when consumers discovered the true position, ALI denied consumers the right to rescind the ALI Contract under the Door-to-Door Sales provisions of the FTA by making the No Cooling-off Misrepresentations.

17. The ACCC considers that by the ALI Salesperson making the Price Representations, ALI:

- 17.1. engaged in conduct, in trade and commerce, that was misleading or deceptive or that was likely to mislead or deceive in contravention of section 52 of the TPA; and
- 17.2. in trade and commerce, in connexion with the supply or possible supply of ALI Products made false or misleading representations with respect to the price of the ALI Products in contravention of section 53(e) of the TPA.

#### **Admission**

18. ALI admits that the conduct described at paragraphs 5 to 17 contravened the TPA, (as applied by Item 6 of Schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010*).

19. Since being made aware of the ACCC's concerns, ALI has:

- 19.1. voluntarily provided refunds of over \$18,000 to some consumers affected by the contraventions referred to in paragraph 18;
- 19.2. reinstated a 10-day cooling-off period on all contracts for all ALI Products made as a result of negotiations by telephone or at a place other than the business or trade premises of ALI, regardless of whether required under Part 3-2, Division 2 of the *Australian Consumer Law* in Schedule 2 of the CCA;
- 19.3. terminated its contractual relationship with the ALI Salesperson; and
- 19.4. paid Infringement Notice penalties totalling \$19,800 in respect of three Infringement Notices issued by the ACCC under section 87ZE of the TPA for contraventions of sections 53(d), 53(e) and 53(g) of the TPA that occurred on or after 15 April 2010 but before 1 January 2011.

#### **Commencement of undertaking**

20. This undertaking comes into effect when:

- 20.1. the undertaking is executed by ALI; and
- 20.2. the ACCC accepts the undertaking so executed.

21. Upon the commencement of this undertaking, ALI undertakes to assume the obligations set out in paragraphs 22 to 28 below.

#### **Undertakings**

22. ALI undertakes for the purposes of section 87B of the TPA and section 87B of the CCA, for a period of three years from the commencement of this undertaking, that ALI (whether by itself, its servants, its agents or otherwise):

- 22.1. will not, in trade or commerce, make false or misleading representations:

- (a) that ALI or ALI Products have any sponsorship, approval or affiliation that they do not have;
- (b) with respect to the price of ALI Products; or
- (c) about the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy; and

22.2. will, in trade or commerce:

- (a) inform all consumers when they first contact or are first approached by an ALI representative by telephone or in person that:
  - (i) ALI is in the business of selling ALI Products; and
  - (ii) the purpose of any home visit is to demonstrate the ALI Products for consumers to purchase;
- (b) provide consumers with a cooling-off period of 10 business days on all ALI Contracts concluded by telephone or at a place other than the business or trade premises of ALI, during which time consumers may elect to rescind the ALI contract; and
- (c) ensure all contractual documentation (including finance documentation) is explained to consumers and that they are provided with adequate time to review all documentation associated with the purchase of an ALI Product.

### **The Consumer Notice**

23. ALI undertakes for the purposes of section 87B of the TPA and section 87B of the CCA, that for a period of three years from the commencement of this undertaking, ALI (whether by itself, its servants, its agents or otherwise) will at the start of each home visit, cause each ALI representative to, at its own expense:

- 23.1. provide to every consumer a single-sided notice that is the same as the notice in **Attachment A** in all respects (including size, font and formatting) (**the Consumer Notice**);
- 23.2. request the customer to sign the original and a duplicate of the Consumer Notice and state in writing the time and date that they received the Consumer Notice;
- 23.3. leave the Consumer Notice with the customer; and
- 23.4. provide the signed duplicate of the Consumer Notice to ALI.

24. ALI will obtain and keep copies of the signed duplicate Consumer Notices referred to in paragraph 23.4 and make the documents available for review by the ACCC if requested at any time.

## The Website Notice

25. ALI undertakes for the purposes of section 87B of the TPA and section 87B of the CCA to, at its own expense:

- 25.1. within 14 days of the commencement of this undertaking, cause to be published on its website homepage ([www.advancedlifestyleinternational.com](http://www.advancedlifestyleinternational.com)) a notice in the form of **Attachment B** to this undertaking (**the Website Notice**);
- 25.2. ensure that the Website Notice and the link to the Website Notice are displayed in accordance with paragraph 25.1 for at least 28 days; and
- 25.3. ensure the Website Notice has the following specifications:
  - (a) the Website Notice is accessible through a prominent one-click link displayed in the top third of the home page of the ALI website entitled 'APOLOGY FOR FALSE OR MISLEADING CONDUCT' with the following minimum specifications:
    - (i) the words 'APOLOGY FOR FALSE OR MISLEADING CONDUCT' to be in uppercase 18 point, bold, black, sans serif font on a white background, centred and in a bordered box;
    - (ii) the words 'Click here for further information' to be 14 point, black, sans serif font on a white background, centred below the words 'APOLOGY FOR FALSE OR MISLEADING CONDUCT' in the same bordered box;
    - (iii) the bordered box is at least 255 pixels wide by 60 pixels high;
    - (iv) the bordered box and its contents, including white space, is to operate in the form of a one-click hyper-link to the Website Notice;
  - (b) the Website Notice is substantially the same as the notice in Attachment B, including font and formatting, and comply with the following specifications:
    - (i) be at least 540 pixels wide by 500 pixels high;
    - (ii) the border will be black and 3 pixels wide;
    - (iii) the ALI, ACCC and Commonwealth logos will be in colour, centred and at least 20mm high;
  - (c) the Website Notice will be displayed on a stand-alone webpage that is coded in standard 'HTML' format; and
  - (d) the Website Notice will not be displayed as a 'pop-up' or 'pop-under' window.

### **The Magazine Notice**

26. ALI undertakes for the purposes of section 87B of the TPA and section 87B of the CCA to, at its own expense:
- 26.1. as soon as practicable after the commencement of this undertaking, but no later than 31 December 2011, cause a notice in the form of **Attachment B** to be published in the magazine '*50 Something*', published by '*National Seniors Australia Ltd*' (**the Magazine Notice**);
  - 26.2. use its best endeavours to ensure the Magazine Notice:
    - (a) appears in the first half of '*50 Something*';
    - (b) is in every respect substantially the same as the notice in Attachment B (including font and formatting), and complies with the following minimum specifications, unless otherwise agreed in writing by the ACCC:
      - (i) is at least a quarter of a page in size;
      - (ii) the headline typeface is 14 point, sans serif typeface;
      - (iii) the body copy is left justified, 8 point, times new roman font;
      - (iv) the ALI, ACCC and Commonwealth logos are 20mm high;
      - (v) the baseline text is 7 point, times new roman font; and
  - 26.3. within 14 days of the publication of the Magazine Notice, provide to the ACCC written evidence of its compliance with this paragraph by providing a copy of the Magazine Notice as published.

### **The Apology Letter**

27. ALI undertakes for the purposes of section 87B of the TPA and section 87B of the CCA to, at its own expense:
- 27.1. within one month of the commencement of this undertaking, cause a copy of the letter in **Attachment C (the Apology Letter)** to be sent by post to each consumer:
    - (a) visited by the ALI Salesperson; and
    - (b) listed in response to question 33(e) and (f) in Schedule 1 to the Notice issued to ALI under section 155(1)(a) and (b) of the TPA dated 23 February 2011;
  - 27.2. ensure the Apology Letter is the same as the letter in Attachment C in all respects (including font and formatting);
  - 27.3. within 14 days of sending the last Apology Letter, provide to the ACCC written confirmation of its compliance with this paragraph; and

- 27.4. within two months of sending the last Apology Letter, provide in writing to the ACCC a list of the names and contact details of each person:
- (a) who contacted ALI in response to receiving an Apology Letter; and
  - (b) who complained that they had suffered loss or damage as a result of any conduct referred to in paragraphs 5 to 17, and state:
    - (i) the steps ALI took to resolve each person's complaint; and
    - (ii) whether ALI considers the person's complaint to have been resolved.

### **Trade Practices Compliance Program**

28. ALI undertakes for the purposes of section 87B of the TPA and section 87B of the CCA to, at its own expense:

- 28.1. within three months of the commencement of this undertaking, implement a trade practices compliance program (**the Compliance Program**) in accordance with the requirements set out in **Attachment D** for the relevant employees, agents and other persons involved in the ALI business, being a program designed to:
- (a) minimise ALI's risk of breaches of the following provisions of the *Australian Consumer Law* contained in schedule 2 of the CCA (**the ACL**):
    - (i) Part 2-1 (Misleading or deceptive conduct);
    - (ii) Part 3-1, Division 1 (False or misleading representations etc.); and
    - (iii) Part 3-2, Division 2 (Unsolicited consumer agreements); and
  - (b) ensure ALI is aware of its responsibilities and obligations in relation to the above provisions of the ACL;
- 28.2. maintain and continue to implement the Compliance Program for a period of three years from the commencement of this undertaking; and
- 28.3. provide a copy of any documents required by the ACCC in accordance with Attachment D.

### **Acknowledgements**

29. ALI acknowledges that:

- 29.1. the ACCC will make this undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website ([www.accc.gov.au](http://www.accc.gov.au));

- 29.2. the ACCC will, from time to time, make public reference to the undertaking including in news media statements and in ACCC publications; and
- 29.3. this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**Executed by**

Advanced Lifestyle International Retail Pty Ltd (ACN 128 888 531) by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.

  
.....  
Director

.....  
Director

This 29.....day of 7.....2011

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO:**

- (A) **SECTION 87B OF THE *TRADE PRACTICES ACT 1974* AS APPLIED BY ITEM 6 OF SCHEDULE 7 OF THE *TRADE PRACTICES AMENDMENT (AUSTRALIAN CONSUMER LAW) ACT (NO.2) 2010*, FOR CONDUCT PRIOR TO 1 JANUARY 2011; AND**
- (B) **SECTION 87B OF THE *COMPETITION AND CONSUMER ACT 2010*.**

  
.....

Mr Rodney Graham Sims

Chairman

This 15.....day of SEP.....2011

Attachment A

**ABOUT THIS SALES PRESENTATION**

1. Thank you for having me in your home today. My name is [*insert name*] and I am a sales consultant for Advanced Lifestyle International Retail Pty Ltd (ALI) of 31 Bennet Avenue, Melrose Park in South Australia.
2. ALI sells massage wands, massage cushions and adjustable massage chairs and beds.
3. The purpose of my visit today is to demonstrate ALI's products. If you think that the massage and ALI products have helped you, I will seek agreement from you to buy a product.
4. The presentation will take approximately one to two hours, depending on the number of questions you have.
5. If you do not want me to continue the presentation, or if you want me to leave your home at any time, please tell me and I am required to leave your home immediately.
6. If you decide that you would like to buy an ALI product when I complete my sales presentation, I am required to explain to you the terms and conditions of the contract of sale, including your right to cancel the contract within 10 business days.
7. If you have any questions or concerns about this, please call ALI on [*insert phone number*].

I will leave the original of this document with you and keep a copy for ALI. Please sign this document to verify that I have provided you with this information **before** I commenced the sales presentation.

.....  
Customer name (please print)

.....  
Date

.....  
Time

.....  
Customer's Signature

I (Salesperson) ..... certify that (Customer's name).....  
to the best of my knowledge and belief, has read and understood this notice.

# CORRECTIVE NOTICE

## Advanced Lifestyle International Retail Pty Ltd

[insert Advanced Lifestyle International's logo]

Between at least 15 January 2010 and 14 October 2010, Advanced Lifestyle International Retail Pty Ltd (ALI) and our salespeople made various representations to consumers during in-home sales presentations for our massage wands, cushions, chairs and beds.

We acknowledge that these representations were false, misleading or deceptive for the following reasons:

1. when approaching consumers by telephone or in shopping centres we obtained invitations to consumers homes by telling them that ALI was offering a 'free therapy treatment' or a 'free massage', when the true purpose of ALI visiting a consumer's home was for salespeople to try and sell ALI products;
2. we represented that ALI or ALI's products were approved, sponsored or affiliated with the 'Government', when this is not true;
3. we represented that the price of an ALI product was less than the price that consumers ultimately had to pay for the product; and
4. we represented that our customers did not have the right to cancel their contract for the purchase of an ALI product within a 10-day cooling-off period, when this was not true.

The ACCC was particularly concerned about this conduct because it was generally targeted towards senior citizens, occurred in their homes and appeared to be designed to mislead consumers into purchasing the products.

ALI has paid three Infringement Notice penalties to the ACCC, totalling \$19,800.

ALI has also provided the ACCC with a court enforceable undertaking (available at [www.accc.gov.au](http://www.accc.gov.au)), which requires ALI to publish various corrective notices and implement a Trade Practices Law Compliance Program to ensure that this conduct will not happen again.

If you believe you have suffered loss or damage as a result of this conduct, contact ALI on [insert contact number] or by letter to [insert ALI postal address].



**Australian  
Competition &  
Consumer  
Commission**

**Attachment C**  
[Insert ALI letterhead]

[Insert date]

[Insert address]

Dear Customer

**An apology to you from Advanced Lifestyle International Retail Pty Ltd**

I am writing to you regarding the massage wand, pillow, chair or bed that you purchased from Advanced Lifestyle International retail Pty Ltd (**ALI**) during an in-home sales presentation between about 15 January 2010 and 14 October 2010.

Recently, the Australian Competition and Consumer Commission (**the ACCC**) received a number of complaints from consumers about ALI.

Following the ACCC's investigation, ALI admitted that it misled or deceived consumers by carrying out the following (**the Conduct**):

1. approaching consumers by telephone or in shopping centres and obtaining invitations into consumers' homes by telling them that ALI was offering 'free therapy treatments' or 'free massages', when the real or predominant purpose of ALI visiting the consumer's home was for salespeople to try to sell ALI's products;
2. telling consumers that ALI or ALI's products were approved or endorsed by 'the Government', when this was not true;
3. misrepresenting that the price of ALI's products was less than what consumers ultimately had to pay; and
4. telling consumers that they did not have the right to a 10-day cooling-off period, during which they could cancel the contract and obtain a refund, when this was not true.

ALI has paid three Infringement Notice penalties to the ACCC totalling \$19,800 in respect of the above conduct, and has terminated the contract of a salesperson who was involved in the conduct

In addition, in response to the ACCC's concerns, ALI has provided a court enforceable undertaking to the ACCC admitting that the Conduct breached the *Trade Practices Act 1974*.

Pursuant to that undertaking, ALI is required to write this letter of apology to ALI customers that may have been affected by the Conduct and to disclose to all future customers that the true purpose for an ALI salesperson visiting a consumer's home is to conduct a sales presentation to try to sell ALI products.

In accordance with that undertaking, I wish to apologise on behalf of ALI for any inconvenience or harm that you may have experienced during the sales process which led you to purchase your ALI massage wand, pillow, chair or bed.

I invite you to contact me **within 30 days** on [insert contact number] or by letter to [insert ALI postal address] if you believe that you were affected by any of the Conduct.

Any concerns that you may raise with ALI will be treated seriously. I am required to inform the ACCC of the names and contact details of any customers who contact me in response to this letter and to inform the ACCC of how I resolve any issues that you bring to my attention.

ALI's sales processes and procedures are currently undergoing review and all of ALI's salespeople are receiving training to ensure that ALI complies in future with its obligations under the *Australian Consumer Law*.

Yours sincerely

Dianne Farquhar  
Managing Director  
Advanced Lifestyle International Retail Pty Ltd

## Annexure D

### TRADE PRACTICES COMPLIANCE PROGRAM

Advanced Lifestyle International Retail Pty Ltd ACN 128 888 531 (**ALI**) will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

#### 1. Appointments

- 1.1. Within one month of the date of the Undertaking coming into effect ALI will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the Compliance Program (**the Compliance Officer**).

#### 2. Compliance Officer Training

- 2.1. ALI will ensure that, within one month of the Undertaking coming into effect, the Compliance Officer attends practical training focusing on the following provisions of the *Australian Consumer Law* (**the ACL**) contained in schedule 2 of the *Competition and Consumer Act 2010* (**the CCA**):
  - 2.1.1. Part 2-1 (Misleading or deceptive conduct);
  - 2.1.2. Part 3-1, Division 1 (False or misleading representations etc.); and
  - 2.1.3. Part 3-2, Division 2 (Unsolicited consumer agreements);**(the Relevant Provisions)**.
- 2.2. ALI will ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law (**a Trade Practices Professional**);
- 2.3. ALI, within 14 days of completion of training, will provide the ACCC with a written statement from a Trade Practices Professional who conducts the training, confirming the completion of the training conducted in accordance with 2.1 and 2.2 above.

### **3. Staff Training**

ALI will cause all employees, agents or representatives of ALI whose duties could result in them being concerned with conduct that may contravene the Relevant Provisions to receive regular (at least once a year) practical training administered by the Compliance Officer (once trained) or a Trade Practices Professional, that focuses on the Relevant Provisions.

### **4. Complaints handling**

ALI will within two months of the Undertaking coming into effect develop procedures for recording, storing and responding to trade practice complaints.

### **5. ALI Documents**

5.1. Within two months of the Undertaking coming into effect and thereafter for the duration of this Undertaking, ALI will ensure that the following documents used by ALI, its employees, agents or representatives (**the ALI Documents**) are approved by a Trade Practices Professional prior to their use:

- 5.1.1. advertising or promotional material;
- 5.1.2. training manuals, instructions or materials;
- 5.1.3. instructions to telemarketers and salespeople;
- 5.1.4. scripts for telemarketing or salespeople; and
- 5.1.5. all other documentation used or referred to during home visits by ALI salespeople for the purpose of ALI salespeople seeking to negotiate and enter into a contract for the supply of ALI products.

5.2. ALI will use its best endeavours to ensure that the Trade Practices Professional signs a copy of each ALI Document and sets out his/her opinion on whether the ALI Document complies with the requirements of the Undertaking.

### **6. Report to directors**

ALI will ensure that the Compliance Officer reports to its director(s) or governing body every six months on the continuing effectiveness of the Compliance Program.

## 7. Provision of Compliance Program to the ACCC

- 7.1. Within three months of the Undertaking coming into effect, ALI will, at its own expense, provide the ACCC with copies of the documents constituting the Compliance Program, including but not limited to:
  - 7.1.1. details of the procedures implemented to ensure compliance with the ACL; and
  - 7.1.2. an outline of the complaint handling system referred to in paragraph 4.
- 7.2. ALI will implement promptly and with due diligence any recommendations made by the ACCC that are reasonably necessary to ensure that ALI implements, maintains and continues to develop the Compliance Program in accordance with the requirements of the Undertaking.
- 7.3. If requested by the ACCC, ALI will provide at its own expense copies of any other documents or information in respect of the matters which are the subject of the Compliance Program.

## 8. Review

ALI shall, at its own expense, cause an annual review of the Compliance Program elements (**the Review**) to be carried out in accordance with each of the following requirements:

- 8.1. **Scope of the Review** – ALI will ensure that the Review is broad and rigorous enough to:
  - 8.1.1. provide ALI and the ACCC with supportable verification that ALI has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of ALI; and
  - 8.1.2. provide to the ACCC the Review Report and opinions detailed from paragraph 8.2 to paragraph 8.4 below.
- 8.2. **Independence of Reviewer** – ALI will ensure that the Review is carried out by a suitably qualified, independent compliance professional or legal practitioner with expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
  - 8.2.1. did not design or implement the Compliance Program;
  - 8.2.2. is not a present or past staff member or director of ALI;
  - 8.2.3. has not acted and does not act for ALI in any trade practices related matters;

- 8.2.4. has not and does not act for or consult to ALI or provide other services on trade practices related matters other than Compliance Program reviewing; and
- 8.2.5. has no significant shareholding or other interests in ALI.
- 8.3. **Evidence** – ALI will use its best endeavors to ensure that the Review is able to be conducted on the basis that the Reviewer has access to all relevant sources of information in ALI’s possession or control, including without limitation:
  - 8.3.1. enquiries of any employees, representatives, agents and stakeholders of ALI;
  - 8.3.2. the ALI Documents referred to in paragraph 5; and
  - 8.3.3. documents created by ALI’s consultants, legal practitioners and accountants for use in ALI’s Compliance Program.
- 8.4. **Timing** – ALI will cause a Review to be carried out within 14 days of each of the following times:
  - 8.4.1. at the conclusion of one year after the commencement of the Undertaking;
  - 8.4.2. at the conclusion of two years after the commencement of the Undertaking; and
  - 8.4.3. at the conclusion of two years and ten months after the commencement of the Undertaking.

## 9. Reporting

- 9.1. ALI will use its best endeavours to ensure that the Reviewer sets out the findings of the Review in a Compliance Program Review Report, which will provide particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:
  - 9.1.1. details of the evidence gathered and examined during the Review;
  - 9.1.2. the name and relevant experience of the person appointed as ALI Compliance Officer;
  - 9.1.3. the Reviewer’s opinion on whether ALI’s staff and salesperson training, complaints handling programs and the ALI Documents comply with the requirements of the Undertaking; and
  - 9.1.4. actions recommended by the Reviewer to ensure the continuing effectiveness of ALI’s Compliance Program.
- 9.2. ALI will ensure that each Compliance Program Review Report is completed and provided to ALI within one month of completion of the Review.

- 9.3. ALI will cause the Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.
- 9.4. ALI will implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC that are reasonably necessary to ensure that ALI maintains and continues to develop the Compliance Program elements in accordance with the requirements of the Undertaking.
10. If requested by the ACCC, ALI will, at its own expense, provide copies of documents and information in respect of matters that are the subject of the Compliance Program.
11. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, ALI will, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting Compliance Program Review Report to be provided to the ACCC.