

CONSUMER AFFAIRS VICTORIA

ENFORCEABLE UNDERTAKING

Pursuant to Section 218 of the Australian Consumer Law (Victoria)

The commitments in this undertaking are offered to the Director of Consumer Affairs Victoria by:

Get Off Drugs Naturally Foundation Inc
ABN 87 271 714 796 ION A0035596U
of 1025 Woods Point Road East Warburton Vic 3799
("the Foundation")

&

Doctor Nerida James, in her capacity as President
of Get Off Drugs Naturally Foundation Inc
of 1025 Woods Point Road East Warburton Vic 3799
("Dr Nerida James")

Director of Consumer Affairs Victoria

1. The Director of Consumer Affairs Victoria ("DCAV") is the holder of the statutory office created under section 107 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic) ("the ACLFTA"). Pursuant to Part 6.2 of the *ACLFTA*, the DCAV is empowered, inter alia, to:
 - (a) monitor compliance with the Australian Consumer Law (Victoria) ("the ACL (Vic)");
 - (b) enquire into and investigate possible contraventions of the ACL (Vic);
 - (c) prosecute alleged contraventions of the ACL (Vic); and
 - (d) institute proceedings to achieve the purposes of the ACL (Vic).
2. The DCAV is the regulator for the purposes of the ACL (Vic), which is applied as a law of Victoria by Part 2.2 of the *ACLFTA*, and, pursuant to section 218 of the ACL (Vic), may accept a written undertaking from any person in connection with any matter involving a contravention of the ACL (Vic) as a means of resolving contraventions of the ACL (Vic).

Background

3. At all relevant times, the Foundation was:
 - (a) a public benevolent institution within the meaning of the *Charities Act 2013* (Cth) and the *Charities (Consequential Amendments and Transitional Provisions) Act 2013* (Cth)
 - (b) the registrant of the domain name 'getoffdrugsnaturally.com.au' for the website www.getoffdrugsnaturally.com.au and the registrant of the domain name 'getoffdrugs.com.au' for the website www.getoffdrugs.com.au.
 - (c) operating, in Victoria, as a not-for-profit association providing a drug and alcohol education and rehabilitation service, for remuneration through short and long stay accommodation in-house programs.

Relevant Legislation

4. Pursuant to section 18(1) of the ACL (Vic), a person must not, in trade or commerce, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.
5. Pursuant to section 29(1) (b) of the ACL (Vic), a person must not, in trade or commerce, in connection with the supply or possible supply of services or in connection with the promotion by any means of the supply of services, make a false or misleading representation that the services are of a particular standard, quality, value or grade.
6. Pursuant to section 29(1)(e) of the ACL (Vic), a person must not, in trade or commerce, in connection with the supply or possible supply of services or in connection with the promotion by any means of the supply of services, make a false or misleading representation that purports to be a testimonial by any person relating to services.
7. Pursuant to section 29(1)(f) of the ACL (Vic), a person must not, in trade or commerce, in connection with the supply or possible supply of services or in connection with the promotion by any means of the supply of services, make a false or misleading representation concerning a testimonial by any person, or a representation that purports to be such a testimonial relating to goods and services.
8. Pursuant to section 29(1)(h) of the ACL (Vic), a person must not, in trade or commerce, in connection with the supply or possible supply of services or in connection with the promotion by any means of the supply of services, make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation.
9. In addition to other remedies available under the ACL (Vic), a body corporate who is found by a Court to have contravened any provision of section 29 of the ACL (Vic) is liable to a civil pecuniary penalty, in respect of each contravention, of not more than \$1.1 million.

The Substantiation Notice (www.getoffdrugsnaturally.com.au)

10. On 28 October 2014, the DCAV sent to the Foundation, a Substantiation Notice ("the Substantiation Notice") under section 219 of the ACL (Vic). The Substantiation Notice required the Foundation to give information and produce documents that could substantiate a number of representations made by the Foundation on the website with the uniform resource locator www.getoffdrugsnaturally.com.au ("the Dormant Website") and representations made by the Foundation on the website with the uniform resource locator www.getoffdrugs.com.au ("the Principal Website"), that:

(a) in relation to the Dormant Website,

- a. *"has demonstrated consistent success in diverse centers from Australia to Brazil...Whether delivered from a doctors clinic or office, a community center run by a church or other social betterment group, or even by a private individual, results so far have shown that a remarkable 80% of still-drug-using, addicted patients who participate in this seminar format workshop succeed in withdrawing to zero consumption, usually within 30 days"* ;
- b. *"This graph depicts cocaine metabolites being excreted in the sweat and urine of clients participating in the Detoxification Program"* ;
- c. *"achieves over 70% success rate with completed clients staying drug-free for many years after they finish the program"* ;
- d. *"detoxification program thoroughly removes the physical cravings for drugs and alcohol naturally and even rids the body of other unwanted toxins and chemicals"* ;
- e. *"Testimonials", which contained thirteen (13) testimonials purportedly from patients who participated in the Detoxification Program;*

(b) In relation to the Principal Website,

- a. *"Our studies show that 7 out of 10 Program Graduates stay clean after 2 years"* ;
- b. *"Get Off Drugs Naturally has a unique Detox Program that thoroughly removes the physical cravings for Drugs and Alcohol naturally and even rids the body of other toxins and chemicals"* ;
- c. *"This graph depicts cocaine metabolites being excreted in the sweat and urine of clients participating in the Detoxification Program"* ;
- d. *"Testimonials", which contained fourteen (14) testimonials purportedly from patients who participated in the Detoxification Program;*

11. DCAV acknowledges that the Foundation, in good faith, removed the Dormant Website in November 2014. The DCAV acknowledges the Dormant Website was not actively used by the Foundation and the Foundation only became aware of its continued existence upon receipt of the Substantiation Notice.
12. The Foundation responded to the Substantiation Notice on 2 December 2014 and 15 December 2014 but did not substantiate all of the representations outlined in paragraph 10 above to the satisfaction of the DCAV.
13. The Foundation provided the DCAV with the results of a survey conducted at the Noongar Alcohol and Substance Abuse Service in 2001 (Study 1) and the results of a Self Assessment Survey conducted at the Foundation's offices in Camberwell (Study 2) to substantiate the representations set out under paragraph 10 above about the services of the Foundation.
14. The DCAV contends that Studies 1 and 2 was not peer reviewed and published in the manner conceived by conventional medicine and prevailing scientific practice. The DCAV noted the lack of scientific methodology in the conduct of Study 2, and that anyone reading the Foundation's representations on the website would not have appreciated that these results emanated from a survey that lacked the fundamental requirements of rigorous and reliable scientific research that may be accepted by the wider scientific community.
15. The DCAV notes the Foundation's is unable to provide information to demonstrate the scientific methodology used in Study 1, notwithstanding the Foundation relies significantly on the data to claim that a success rate of 80%. The DCAV considers it unreasonable that the Foundation has failed to have evaluated the competence, capabilities and objectivity of Study 1, and failed to evaluate the appropriateness of that author's work, methods, skill and expertise prior to making the relevant assertion on the website.
16. The Foundation provided ten (10) copies of statutory declarations (except for four (4) patients) purportedly sworn by family members and friends of the fourteen patients. As these statements were not made by the patients themselves, the DCAV considers the statutory declarations to be scientifically unreliable in the circumstances. Accordingly, DCAV did not accept these ten statutory declarations constitute scientific evidence demonstrating consistent success of the Foundation's Detoxification Program.
17. The DCAV noted that other than Studies 1 and 2, no further independent research or studies was conducted by the Foundation and that the Foundation sought to rely on studies that were not peer reviewed and published in the manner conceived by conventional medicine and prevailing scientific practice or were conducted outside of Australia.

18. The DCAV noted the Foundation's use of a pictographic representation illustrating the levels of cocaine in sweat and urine was indicative of 1 of the 6 study subjects during a sauna detoxification treatment. By making the representation set out in paragraph 10, the DCAV found that the Foundation was unable to substantiate the representations about the services of the Foundation satisfactorily, as the pictographic representation did not support any independent scientific research undertaken by the Foundation on Australian patients.
19. The DCAV noted errors in relation to the identity of some patients featured on the dormant website and that the Foundation relied on testimonials taken from a website from the United States of America, the understanding being that such testimonials accurately replicated the results of Australian patients.

Contraventions of the ACL (Vic)

20. The representations set out under paragraph 10 above about the services of the Foundation:
 - (a) relate to the standard, quality, value or grade of the Foundation's services; and/or
 - (b) imply that the services have performance characteristics, uses or benefits which they do not have; and/or
 - (c) imply that the Foundation had conducted independent peer reviewed scientific testings beyond what has actually been done.
21. The DCAV considers that the Foundation has failed to adequately substantiate the statements set out in paragraph 10 above and that the statements are each materially false in some detail.
22. By making the representations outlined in paragraph 10 above without supporting evidence, the DCAV considers that the Foundation contravened sections 18 and 29(1)(b), (g) and (h) of the ACL (Vic).
23. By publishing the testimonials referred to in paragraph 10 (a) as testimonials from patients of the Foundation, the DCAV considers that the Foundation has in some instances contravened section 29(1)(e) and (f) of the ACL (Vic).

Acknowledgement of the contraventions

24. The Foundation acknowledges that the conduct referred to in paragraphs 10 contravened sections 18 and 29(1)(b), (e), (f), (g) and (h) of the ACL (Vic). The President acknowledges, on behalf of the Foundation, that the conduct referred to in paragraphs 10 above as alleged by the DCAV to have contravened sections 18 and 29(1)(b), (e), (f), (g) and (h).

25. The Foundation and the President acknowledges this conduct and seek to address these contraventions of sections 18, 29(1)(b), (e), (f), (g) and (h) of the ACL (Vic) by offering this Enforceable Undertaking to the DCAV.

The Enforceable Undertakings

26. The Foundation hereby undertakes to the Director of Consumer Affairs Victoria, pursuant to section 218 of the ACL (Vic):
- (a) that it has removed all statements referred to in paragraphs 10 above and that it will not republish them;
 - (b) that it will review all material published on its website www.getofdrugs.com.au in accordance with the Compliance Program set out below;
 - (c) that it will not republish or reinstate the website www.getoffdrugsnaturally.com.au, which was removed in November 2014;
 - (d) that the Foundation will, within ninety (90) days of the commencement date of this Enforceable Undertaking, implement and maintain, for a period of two (2) years, a Compliance Program in accordance with **Annexure "A"** of this Enforceable Undertaking designed to ensure that, in or for the purposes of trade or commerce, all materials produced or published by it, in any form whatsoever, comply with the requirements of the ACL (Vic);
 - (e) that within four (4) weeks from the commencement date of this Enforceable Undertaking, the Foundation will pay to the DCAV, on behalf of the Victorian Consumer Law Fund, created under section 134 of the ACLFTA, a total of three thousand dollars (\$3,000.00);
 - (f) that the Foundation will notify the DCAV in writing, within ninety (90) days from the commencement of this Enforceable Undertaking, that it has implemented a Compliance Program in accordance with paragraph 26(d) above;
 - (g) that the Foundation will retain and continue to operate the website accessible via uniform resource locator (URL), at the web address www.getoffdrugs.com.au for the duration of this Undertaking and within fourteen (14) days of commencement of this Enforceable Undertaking, publish a Notice in accordance with paragraph 26(h) below;
 - (h) that the Foundation must cause to be published continuously for a period of 6 (six) months from the date the relevant notice is published, prominently and conspicuously a Notice, in the form of **Annexure "B"** to this Enforceable Undertaking, on the home page of the website, www.getoffdrugs.com.au (or if any such URL is replaced or changed, the Internet home page of those corresponding websites). The Notice must:

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- (i) be viewable by clicking through a "click-through" icon located on the website, www.getoffdrugs.com.au or any replacement website, and must be in the English language;
 - (ii) the "click-through" icon referred to in the previous sub paragraph must be located in a central position on the page first accessed when the user opens the home page of the website, www.getoffdrugs.com.au, or any replacement website use a minimum type size of 10 point Times New Roman or equivalent;
 - (iii) the "click-through" icon must contain the words "CONSUMER AFFAIRS VICTORIA – IMPORTANT NOTICE" (in capital letters and use a font size of not less than 14 point Times New Roman), clearly and prominently in red on a contrasting background and the words "Click Here" and be in full red colour;
 - (iv) the Notice occupies the entire page of the Website and Principle Website each time and the first time a person visits a webpage of the Website or Principle Website, or on any replacement website, which is accessed via the "click-through" icon referred to above; and
 - (v) the website, www.getoffdrugs.com.au (or if any such URL is replaced or changed, the Internet home page of the corresponding website), must not have in place any mechanism which would preclude internet search engines from:
 - (a) indexing the page; or
 - (b) scanning the pages for links to follow.
- (i) The Foundation agrees to not, whether by itself, its servants, agents or otherwise howsoever, on the website, www.getoffdrugs.com.au, or any other media, including print and online, make claims or representations in regards to the Foundation's Detoxification Program as to its:
- (a) suitability to treat and cure alcohol and drugs addictions;
 - (b) real world testing on volunteers; and
 - (c) successful results of that testing -
- if those claims or representations have not been professionally and independently verified in a peer reviewed journal.
- (j) The Foundation acknowledges that if the Director of Consumer Affairs Victoria or the Director's authorised delegate considers that the Foundation has breached any of the

terms of this Enforceable Undertaking, without limiting any other available enforcement action, an application may be made to a Court for an order under section 218(4) of the ACL (Vic).

Extra-territorial effect of the Undertakings

27. The undertakings that are provided for under paragraph 26 above, apply to conduct occurring both within and outside the State of Victoria, to the full extent permitted by section 5 of the ACLFTA.
28. Section 5 of the ACLFTA provides that the ACLFTA and the ACL (Vic) apply to conduct that occurs both within and outside the State of Victoria, where there exists an appropriate nexus to the State. Accordingly, enforcement action may be taken by the DCAV for conduct occurring in any other State or Territory where there is a sufficient nexus to the State of Victoria.
29. This section specifies that the ACLFTA and the ACL (Vic) apply, but are not limited to, the following:
 - (a) the engaging in conduct in the State of Victoria by persons outside the State of Victoria and vice versa;
 - (b) the supply of goods or services in the State of Victoria where the contact for the supply of goods or services is made in Victoria; and
 - (c) where a contract for the supply of goods or services is made outside the State of Victoria, a supply of goods or services to a person normally resident in the State of Victoria or a body corporate whose principal place of business is in the State of Victoria.
30. In addition to the above, the undertakings provided by the Foundation apply to conduct occurring both within and outside the State of Victoria, to the full extent permitted by both sections 5 and 12 of the ACLFTA.
31. Pursuant to section 12(1) of the ACLFTA, the ACL (Vic) also extends and applies to:
 - (a) persons carrying on business within the State of Victoria;
 - (b) bodies corporate incorporated or registered under the law of the State of Victoria; and
 - (c) persons ordinarily resident in the State of Victoria; or
 - (d) persons otherwise connected with the State of Victoria.

32. Pursuant to section 12(2) of the ACLFTA, the ACL (Vic), in reference to the four groups specified above, extends and applies to conduct and other acts, matters or things, occurring or existing outside or partly outside Victoria (whether within or outside Australia).

Commencement and Duration of the Undertaking

33. This Enforceable Undertaking comes into effect when it is executed by the Foundation; and is accepted by the DCAV.
34. The term of the Enforceable Undertaking shall be for a period of three (3) years from the date the Enforceable Undertaking is accepted by the DCAV.

Acknowledgements

35. The Foundation hereby acknowledges that:
- (a) the DCAV will register this Enforceable Undertaking in the Register of Undertakings and make this Enforceable Undertaking available for public inspection pursuant to section 200 of the ACLFTA;
 - (b) the DCAV and/or the Minister for Consumer Affairs may, from time-to-time, publicly refer to this Enforceable Undertaking;
 - (c) this Enforceable Undertaking in no way derogates from the rights and remedies available to the DCAV arising from any conduct described in this Enforceable Undertaking that arises from conduct outside the relevant period or from future conduct (including the right to pursue compensation for or in the name of any consumer);
 - (d) this Enforceable Undertaking in no way derogates from the rights or remedies available to any other person or entity (including any other regulatory agency) arising from any conduct described in this Enforceable Undertaking that arises from conduct outside the relevant period or from future conduct; and
 - (e) this Enforceable Undertaking in no way derogates from the obligation of the Foundation, its officers, employees, and agents to fully comply with the provisions of the ACL (Vic) and the ACLFTA.

EXECUTION

Executed By:

**Get Off Drugs Naturally Foundation Inc
(ABN 87 271 714 796)**

Signed by: DR Nerida James N.D.
President

NERIDA JAMES
Print Name

In the presence of: Natasha Curato
Witness

NATASHA CURATO
Print Name

Accepted By:

The Director of Consumer Affairs Victoria or the Authorised Delegate of the Director.

The Director: [Signature]

Accepted the 5th day of May 2015

ANNEXURE "A"

COMPLIANCE PROGRAM

1. The Foundation must, within ninety (90) days of the commencement of this Enforceable Undertaking, appoint a senior employee with responsibility for ensuring that the Compliance Program is effectively established, maintained and administered in accordance with the requirements of the Enforceable Undertaking (the Compliance Officer).
2. After the appointment of the Compliance Officer, the Foundation must take all reasonable steps to ensure that, for the duration of the Enforceable Undertaking, there is a senior employee appointed as Compliance Officer with responsibility for ensuring that the Compliance Program is effectively established, maintained and administered in accordance with the requirements of the Enforceable Undertaking.
3. The Foundation must take all reasonable steps to ensure that the Compliance Officer reports in writing to the Foundation's Board of Director(s) every twelve (12) months with respect to the on-going maintenance and administration of the Compliance Program.

Compliance Policy

4. The Foundation must through its Compliance Officer, establish a policy (Compliance Policy) which is communicated in writing to all employees and agents involved in the advertising or promotion of the Foundation or its services and which must contain:
 - (a) a statement of commitment by the Foundation to comply with the misleading and deceptive conduct and representation aspects of the *Australian Consumer Law (ACL)* and the *Australian Consumer Law & Fair Trading Act 2012 (the Acts)*;
 - (b) a direction to all such persons to report any misleading and deceptive conduct and representation compliance related issues and concerns to the Compliance Officer;
 - (c) a statement that the Foundation will take disciplinary action against any persons who are knowingly or recklessly concerned in a contravention of the *Acts* in relation to contravention of misleading and deceptive conduct and representation aspects of the *Acts* and that it will not indemnify them.
5. The Foundation must, through its Compliance Officer, ensure that if it makes any representation, in any form whatsoever, to prospective patients in relation to the benefits of the Foundation's Detoxification Program:

as to its:

- (a) suitability to treat and cure alcohol and drugs addictions;
- (b) real world testing on volunteers; and
- (c) successful results of that testing,

- that it also provides this advice:-

“The benefits and risks attaching to any alcohol and/or drugs rehabilitation will depend upon the individual medical circumstances of the patients. This information is not a substitute for professional medical care by a qualified doctor or other health care professional. Always check with your doctor if you have any concerns about your condition or treatment and to assess if the Get Off Drugs Naturally Detoxification Program is right for you”.

6. The Foundation must take all reasonable steps to ensure that the Compliance Program is maintained and administered in a manner that is consistent with the Compliance Policy for the duration of the Enforceable Undertaking.
7. The Foundation must provide a written copy of the Compliance Policy to all new employees whose duties could result in them being concerned with misleading, deceptive and false representation related conduct that may contravene the Acts.
8. The Foundation must maintain copies of the Compliance Policy at its principal place of business and at all other places at which it carries on business during the currency of the undertaking.
9. The Foundation must maintain original copies of any testimonials provided by any either current or future patients at its principal place of business and at all other places at which it carries on business and must not publish any testimonials during the currency of the Enforceable Undertaking without verifying or substantiating the validity of those statements.

ANNEXURE "B"**IMPORTANT INFORMATION**

This Notice has been published pursuant to an Enforceable Undertaking provided to the Director of Consumer Affairs Victoria

The information provided on this website is not a substitute for professional medical care by a qualified doctor or other health care professional. Please seek advice from your health care professional as to program suitability prior to seeking treatment.

Unless specifically noted, any claims or representations made on this website as to its real world testing and outcomes have not been independently verified in a peer reviewed journal.