

**UNDERTAKING TO THE
AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
GIVEN UNDER SECTION 87B OF THE TRADE PRACTICES ACT 1974**

BY

**FERRY REAL ESTATE (QLD) PTY LTD;
FERRY PROPERTY MANAGEMENT PTY LTD; AND
CASTORINA INVESTMENTS PTY LTD**

This undertaking is given to the Australian Competition and Consumer Commission (“the Commission”) by Ferry Real Estate (Qld) Pty Ltd, Ferry Property Management Pty Ltd and Castorina Investments Pty Ltd which at the relevant times have traded as Ferry Real Estate (Townsville) of 77 Denham St, Townsville, in the State of Queensland under *section 87B* of the *Trade Practices Act 1974* (“the Act”)

Background

1. Prior to 1 July 2000, Ferry Property Management Pty Ltd (ACN 009 802 064) and Castorina Investments Pty Ltd (ACN 083 114 210) carried on the business of Ferry Real Estate (Townsville) (BN 3054457). The Commission has been advised by Ferry Property Management Pty Ltd that the business was sold to Ferry Real Estate (Qld) Pty Ltd (ACN 093 347 061) as at 30th June/1st July 2000. Ferry Property Management Pty Ltd, Castorina Investments Pty Ltd, Ferry Real Estate (Qld) Pty Ltd and the business name Ferry Real Estate (Townsville) shall hereafter be referred to as Ferry.
2. Ferry provides real estate agency and property management services in and around Townsville and manages in excess of 1000 residential properties.
3. On 31 March 2000, Ferry sent letters to landlord clients having residential property management agreements (“agreements”) with Ferry advising of increased management fees to commence on 1 May 2000. The letters enclosed new agreements to be signed.

The letters stated that:

“We are thus taking the opportunity as of 1 May 2000 to adjust the fees charged to an all encompassing commission rate of 8.8% p.a.....

No further increase will occur when GST is introduced on 1st July 2000. We shall hold our fee to 8.8% p.a. for the foreseeable future. This is reflective of our commitment to continue to provide our Landlord clients with quality service at a competitive price.”

4. Prior to the fee increase referred to in the letter mentioned in paragraph 3 above, the management fee payable under agreements was generally a total of 7.5% of rental income. The management fee before and after 1 May 2000 contained the following components:

	<u>Before 1 May 2000</u>	<u>After 1 May 2000</u>
Rent collection:	2.5%	2.5% (inclusive of GST)
Management Fee:	<u>5.0%</u>	<u>6.3% (inclusive of GST)</u>
Total	7.5%	8.8% (inclusive of GST)

The current fees of 8.8% are referred to as inclusive of GST in the agreements.

5. Prior to 1 July 2000, and generally on or around 1 May 2000 Ferry commenced deducting 8.8% fees from the rental receipts.
6. On 1 July 2000 Ferry did not increase the fees further for the Goods and Services Tax.
7. Concerns were raised with the Commission by landlord clients regarding agreements held with Ferry. After discussions with Ferry and investigations by the Commission’s North Queensland office, the Commission reached the view that Ferry was likely to have contravened *section 75AU* of the Act which prohibits price exploitation in relation to the New Tax System changes. Specifically, the Commission was of the view that Ferry increased its fees in anticipation of the Goods and Services Tax and that the increase on 1 May 2000 to 8.8% included a Goods and Services Tax component.
8. The Commission has raised its concerns with Ferry. Ferry have acknowledged that the said conduct may have raised concerns under *section 75AU* of the Act by means set out in paragraph 7 above.

Commencement of Undertakings

9. This undertaking comes into effect when:
- a. the undertaking is executed by Ferry; and
 - b. the Commission accepts the undertaking so executed.

Undertakings

10. Ferry gives the following undertaking to the Commission for the purposes of *section 87B* of the Act
- a. Ferry will send corrective letters of apology to all landlord clients that incurred the increased management fees of 8.8% prior to 1 July 2000. These letters are to be the same terms, content, size and format to Annexure 1.
 - b. Ferry undertakes to credit its landlord clients in the next monthly statement from the acceptance of this undertaking. This credit is to be referred to in the statement and the statement is to be forwarded with the corrective letter referred to in paragraph 10(a) above. The credit is to relate to the period from the date that the price increase of 8.8% commenced being collected (whether that be from 1 May 2000 or any earlier date) until 30 June 2000. This credit will amount to 1/11th of 8.8% of rental income and will reduce the rate effectively charged during that period and up until 30 June 2000 to 8.0% of rental income.
 - c. Ferry will institute a Trade Practices Compliance Program setting up procedures and mechanisms to ensure that future conduct and representations are unlikely to contravene the *Trade Practices Act*. The terms of the program will:
 - i. comply with Australian Standard on Compliance Programs 3806-1998 and be tailored to suit the circumstances of Ferry;

- ii. be provided to the Commission within 2 months of the acceptance of these undertakings for approval and any reasonable amendments as requested by the Commission to be implemented;
 - iii. appoint a Director or Senior Manager as Trade Practices Compliance Officer to have overall responsibility for trade practices compliance;
 - iv. include an education program calculated to ensure that relevant staff are aware of the relevant provisions of the Act; and
 - v. include a mechanism for independent expert review of the Program at periods of 12 and 24 months from implementation.
- d. Ferry will, within 1 month of acceptance of this undertaking put in place a mechanism for ongoing review of costs with a view to identifying cost savings or increased margins, to ensure that all savings associated with the New Tax System have been, and will be, passed on to consumers. Such reviews are to take place:
- i. 3 months after the acceptance of this undertaking; and
 - ii. 9 months after the acceptance of this undertaking.
- e. Where cost savings as a result of the New Tax System changes are identified through the review mechanism referred to in paragraph 11(d) above, Ferry will ensure that prices are adjusted to pass those savings on to consumers.

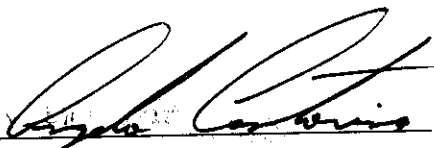
Acknowledgments

11. Ferry acknowledge the Commission's right to make this undertaking available to the public including placing it on a register, publicising it and allowing third parties to publish it.
12. Ferry further acknowledges that the Commission may issue a media release about this undertaking and may, from time to time, publicly refer to this undertaking.

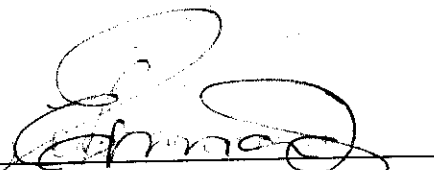
13. Ferry acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct of Ferry.

14. Ferry further acknowledges that the compliance program as in force from time to time will be held with this undertaking on the public register.

Signed on behalf of Ferry Real Estate (Qld) Pty Ltd:

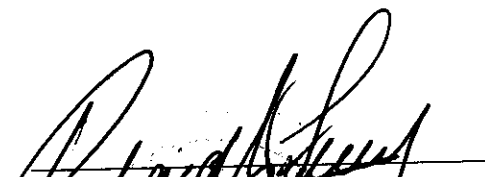

Director – Signature

30/11/00
Date

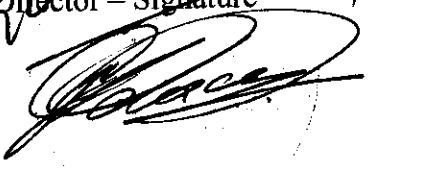

Common Seal – Signature

30/11/00
Date

Signed on behalf of Ferry Property Management Pty Ltd:

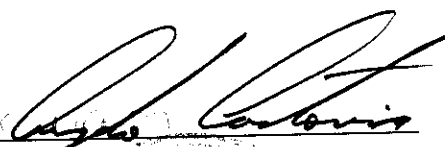

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Common Seal – Signature

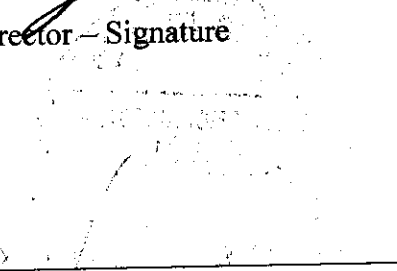
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Signed on behalf of Castorina Investments Pty Ltd:



Director – Signature

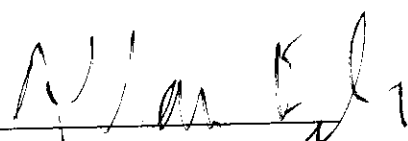
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Date



Common Seal – Signature

Date

Accepted by the Australian Competition and Consumer Commission pursuant to *section 87B* of the *Trade Practices Act 1974*.



Professor Allan Fels (Chairperson)

this 30 day of November 2000

Annexure 1 – Corrective Letter

<Insert letterhead of Ferry>

<Insert Date>

<Insert landlord clients details as appropriate>

Dear *<Insert Name>*

Our Apologies

As you are aware, as of 1 May 2000 we adjusted the fees charged under residential property management agreements from 7.5% to 8.8%. We advised that these rates would not increase again for GST on 1 July 2000.

Concerns have been raised by the Australian Competition and Consumer Commission (ACCC) that the increase on 1 May 2000 may have included a GST component. The ACCC was concerned that we may have anticipated the GST and as such engaged in price exploitation. We have acknowledged that the conduct may have raised concerns in respect of the price exploitation provisions of the Trade Practices Act.

In order to fix the problem, we have agreed to refund 1/11th of the management fees collected in May and June and to provide this as a credit in this month's statement, which is enclosed. The credit reduces the rate paid in May and June to 8% of rental income.

We apologise for any inconvenience. Should you have any questions relating to the matters above or generally about GST and residential property management agreements, please feel free to contact me on *<insert number>*.

Yours sincerely

<Insert name of Director>

Director