

TRADE PRACTICES ACT 1974

**UNDERTAKINGS TO THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION GIVEN FOR THE PURPOSE OF SECTION 87B**

BY

CLARENDON HOMES (NSW) PTY LIMITED (ACN 003 892 706)

PERSON GIVING UNDERTAKING

1. This Undertaking is given to the Australian Competition & Consumer Commission ("the Commission") by Clarendon Homes (NSW) Pty Limited ("Clarendon"), (ACN 003 892 706) of Suite 20 Kildare Court, 15-17 Kildare Road Blacktown in the state of New South Wales under section 87B of *the Trade Practices Act 1974* ("the Act").

BACKGROUND

2. Clarendon is a New South Wales based residential home construction business with eight display sites located in Sydney, Newcastle and on the Central Coast.
3. In or about October 1999 Clarendon sought to address the concerns of potential new clients regarding the effect of GST on building works. Clarendon offered contracts with GST inclusive prices to clients who signed contracts based on quotations dated on or after 29 October 1999. This undertaking does not relate to clients of Clarendon who signed contracts based on quotations dated on or after 29 October 1999.

4. On or about 16 June 2000 Clarendon wrote to each client who:
 - (a) had signed a contract for the construction of a house based on a quotation dated before 29 October 1999; and
 - (b) whose house would not be completed by 1 July 2000("affected Clarendon clients"), stating they would have to pay any GST payable on work completed on or after 1 July 2000. There are 208 affected Clarendon clients.
5. Since June 2000 the Commission has received a number of complaints from the affected Clarendon clients.
6. The complainants alleged that they contracted with Clarendon relying on representations made by sales staff and in promotional material that the price for the construction of a house was inclusive of GST and, therefore, they should not have to pay an amount for GST in addition to the contract price.
7. On 1 August 2000, the Commission advised Clarendon that, by seeking to recover an amount for GST in addition to the contract price from affected Clarendon clients who had relied on representations by Clarendon that the contract price was GST inclusive, it may have engaged in misleading or deceptive conduct and made misleading or false representations in relation to price in breach of section 52 and 53(e) of the Act.
8. On 2 August 2000, Clarendon advised the Commission that it would investigate what representations were made to the affected Clarendon clients.

9. On 15 August 2000, Clarendon wrote to all affected Clarendon clients advising that it would not seek to recover an amount for GST in addition to the contract price.

10. On 24 August 2000, Clarendon sent a cheque by way of refund to those affected Clarendon clients who had paid an amount for GST in addition to the contract price.

11. To resolve the matter, Clarendon has decided that it will not seek to recover an amount for GST in addition to the contract price from the affected Clarendon clients. Further, to ensure future compliance with the Act, Clarendon proposes to:
 - a) review all marketing and promotional material to ensure that it complies with the Act; and
 - b) review its complaint handling procedures in accordance with the Australian standard for Complaints Handling AS4269 of 1995 to ensure satisfactory resolution of future complaints.

12. The Commission and Clarendon have agreed to resolve this matter by the giving and accepting of an undertaking in the terms contained herein.

COMMENCEMENT OF UNDERTAKING

13. This undertaking comes into effect when:
 - (a) the Undertaking is executed by Clarendon; and
 - (b) the Commission accepts the Undertaking so executed.

UNDERTAKINGS

14. Clarendon gives the following Undertakings to the Commission for the purposes of section 87B of the Trade Practices Act.

GST Liability

15. Any amount of GST which Clarendon is required by law to include in its clients' tax invoice from 1 July 2000 will form part of the fixed contract price as stated in its clients' contracts.

16. Within seven (7) days of acceptance of this Undertaking by the Commission, Clarendon will write to each of the affected Clarendon clients to inform them of the contents of this undertaking, with such letter to be agreed with the Commission.

17. Clarendon will implement a trade practices compliance program in accordance with Annexure A.

18. This undertaking will remain operative for a period of two years commencing from the date that the undertaking is accepted by the Commission.

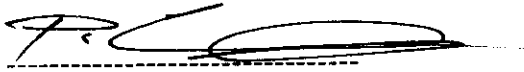
Acknowledgments

19. Clarendon acknowledges that the Commission will make this undertaking available for public inspection.

20. Clarendon acknowledges that the Commission will, from time to time, publicly refer to this undertaking.

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

Signed on behalf of Clarendon by

A handwritten signature in black ink, appearing to be 'P. Clarendon', written over a horizontal dashed line.

This 4th day of ~~September~~ 2000

**ACCEPTED BY THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES
ACT 1974**

A handwritten signature in black ink, appearing to be 'Allan Fels', written over a horizontal dashed line.

Professor Allan Fels

Chairperson

This 12th day of ~~September~~ 2000

Annexure A

Trade Practices Compliance Program

The trade practices compliance program ("Program") to be undertaken by Clarendon will be implemented as follows:

General

1. Clarendon will within three (3) months of receipt of the Commission's acceptance of this Undertaking implement the following Program at its own expense.

Compliance officer

2. Clarendon will appoint an appropriately qualified Officer or employee as a Trade Practices Compliance Officer ("Compliance Officer").

Complaints handling

3. Clarendon will review its current complaint handling procedures and ensure that the Program incorporates an appropriate complaint handling mechanism developed in accordance with the Australian Standard for complaint handling AS 4269 of 1995.

Review of promotional material and tender documents

4. Clarendon will review its marketing and promotional material and tender documents within one (1) month of the commencement of the compliance program.
5. Clarendon will make appropriate amendments to its promotional material and tender documents within three (3) months of the commencement of the compliance program.

Training

6. Clarendon will develop and implement an education program calculated to ensure that customer service, sales, managerial, marketing and administrative staff employed by Clarendon are conversant with the provisions of Part V and VB of the Act to a level where:
 - a) they can avoid obvious contraventions and can identify more complex trade practices problems for referral;
 - b) the Compliance Officer can carry out their responsibilities; and
 - c) the Compliance Officer can address more complex trade practices issues or, if not legally qualified Clarendon's legal adviser.

7. Clarendon will ensure that training sessions covering all aspects of Part V and VB of the Trade Practices Act be given to customer service, sales, marketing managerial and administrative staff on two occasions within the twelve months after the implementation of the Program. The first of these training sessions is to be completed within 6 months of the Program being implemented and the remaining one between 9 and 12 months later. The Commission notes that Mr Neil Buck conducted one half-day seminar on 14 August 2000.

Reporting

8. Clarendon will provide the Commission with the following:
 - a) Within 10 working days of the implementation of the Program, notice of the appointment of the Compliance Officer including name, position and contact details; and
 - b) Within 10 working days after each of the training sessions, notice of completion of that seminar including an outline of the session, details of the presenter(s) and details of attendees;
9. Clarendon will make changes to the Program as reasonably requested by the Commission. Such changes are to be implemented within one (1) month of the Commission's request.

Duration

10. The Program will remain in effect for three (3) years following the undertaking coming into effect.

Letter to Clarendon Clients

We refer to our letter dated 15 August 2000 and again confirm that Clarendon will absorb any GST payable on the unfinished portion of your home at 1 July 2000. The purpose of this letter is to provide you with some further details relating to Clarendon's decision to absorb the GST liability.

Earlier this month, the Australian Competition and Consumer Commission ('ACCC') informed us that some of our clients had raised concerns that they had been assured by our staff prior to signing their contract that either they would not be liable to pay any GST or that it was likely their homes would be finished by 30 June 2000 and therefore there would be no liability for GST. These clients received our letter in June advising that GST would be payable on the incomplete portion of building works as at 1 July 2000.

Once Clarendon was made aware that such representations may have been made to some customers, Clarendon decided to absorb the GST liability for all customers who signed a contract based on a price quoted prior to 29 October 1999. Clarendon has also agreed to enter into formal undertakings to implement a trade practices compliance program.

The net effect of Clarendon's decision is that you do not have to pay more than the contract price for your home because of the GST. Please note, however, that invoices for your payments will include a component for GST although the GST will not increase the total contract sum.