

TRADE PRACTICES ACT 1974 - SECTION 87B**UNDERTAKING****PERSON GIVING UNDERTAKING**

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Enterprise Fire Protection Pty Ltd, ACN 010 595 212 ("EFP"), Enterprise Fire Protection Electrics Pty Ltd, ACN 069 159 744 ("EFPE"), and Michael Wild, Steven Spurr, Clint Prickett and Ian Taylor ("the individuals") under section 87B of the *Trade Practices Act 1974* ("the Act").

BACKGROUND

On 29 September 1999 the Commission instituted Federal Court proceedings Q239 of 1999 against fire protection companies and individuals in Queensland including EFP, EFPE, and their directors, the individuals ("the proceedings"). The proceedings involve price-fixing and market sharing conduct in the Queensland fire protection industry, in breach of sections 45(2)(a)(ii) and 45(2)(b)(ii) of the Act. The conduct is set out the statement of claim filed in the proceedings.

As part of the resolution of the proceedings, EFP, EFPE and the individuals have agreed to provide to the Commission the undertaking contained herein as to the maintenance of a trade practices compliance training program, to ensure, so far as reasonably possible, EFP, EFPE and their officers and employees are not involved in further contraventions of Part IV of the Act.

EFP's ability to pay the penalties out of its own funds has been reduced because of a 1997 distribution of profits to its shareholders in an amount which exceeds the total of the penalties to be recommended to the Court, and the fact that EFP has ceased contracting new business. The directors of EFP state that they have ceased contracting new business through that company because of industrial relations issues. In recognition of this, Michael Wild and Steven Spurr have undertaken to personally pay any part of EFP's penalty, should it be unable to do so, up to a maximum of \$75,000 each. The individuals have also undertaken to use their best endeavours to operate EFP and EFPE in such a manner as to ensure that the companies are able to meet their obligations under the orders to be recommended to the Court.

2.

The Commission has agreed to accept the undertaking from EFP, EFPE and the individuals under section 87B of the Act.

COMMENCEMENT OF UNDERTAKING

1. This undertaking comes into effect when:
 - (a) the undertaking is executed by EFP, EFPE and the individuals; and
 - (b) the undertaking so executed is accepted by the Commission.

UNDERTAKINGS

2. EFP and EFPE undertake that:
 - (a) EFP has implemented, and EFPE will implement, a trade practices compliance program and code of conduct for tendering.
 - (b) The compliance program will aim to create a culture of compliance within EFP and EFPE and to prevent, so far as is reasonably possible, any future contraventions of the Act by EFP, EFPE or their officers, employees or agents.
 - (c) The compliance program will cover all officers and employees of EFP and EFPE whose duties could result in their being concerned in conduct that might breach the Act.
 - (d) EFP and EFPE will provide details of the compliance program to the Commission within 45 days of the date of this undertaking.
 - (e) EFP and EFPE will, within 45 days of notification from the Commission, incorporate into the compliance program, and implement as part of the compliance program, any reasonable changes that are recommended by the ACCC in writing.
 - (f) The compliance program will remain in force for a minimum period of three years from the date of this undertaking.

3.

3. Michael Wild and Steven Spurr undertake that:
 - (a) they will use their best endeavours to ensure that EFP complies in all respects with the undertakings it has given herein;
 - (b) they will use their best endeavours to ensure that EFP is able, and at all times remains able, to comply with EFP's obligations to pay pecuniary penalties by the due dates therefor under the orders agreed between EFP, EFPE, the individuals and the Commission, and to be recommended to the Court;
 - (c) should EFP fail to meet any of its obligations to pay pecuniary penalties by the due dates as referred to above, or as otherwise ordered by the Court, they will each pay to the Commonwealth of Australia, on behalf of EFP, the amount of pecuniary penalty remaining unpaid, up to a maximum of \$75,000 each, provided that the total of their personal liability arising from pecuniary penalties ordered against them by the Court and this undertaking shall not exceed \$125,000 each.
4. The above undertaking is not intended to require EFP to recommence contracting new business.
5. Clint Prickett and Ian Taylor undertake that:
 - (a) they will use their best endeavours to ensure that EFPE complies in all respects with the undertakings it has given herein; and
 - (b) they will use their best endeavours to ensure that EFPE is able, and at all times remains able, to comply with EFPE's obligations to pay pecuniary penalties by the due dates therefor under the orders agreed between EFP, EFPE, the individuals and the Commission, and to be recommended to the Court.
6. EFP, EFPE and the individuals note that the Commission may make public the terms of this undertaking.
7. EFP, EFPE and the individuals acknowledge that this undertaking in no way derogates from any rights and remedies that may be available to any other person arising from the alleged conduct.

4.

EXECUTED on the 21st day of March 2000.

The Common Seal of **ENTERPRISE FIRE PROTECTION**)
PTY LTD was affixed in accordance with its Articles of)
 Association in the presence of:)

[Signature]
 Signature of authorised person

DIRECTOR

Office held

MICHAEL WILD.

Name of authorised person

SIGNED BY:

[Signature]
MICHAEL WILD

The Common Seal of **ENTERPRISE FIRE PROTECTION**)
ELECTRICS PTY LTD was affixed in accordance with its)
 Articles of Association in the presence of:)

[Signature]
 Signature of authorised person

DIRECTOR

Office held

CLINT LAWRENCE PRICKETT

Name of authorised person

SIGNED BY:

[Signature]
CLINT PRICKETT

[Signature]
 Signature of authorised person

Director

Office held

Steven Spurr

Name of authorised person

[Signature]
STEVEN SPURR

[Signature]
 Signature of authorised person

DIRECTOR

Office held

IAN JAMES TAYLOR

Name of authorised person

[Signature]
IAN TAYLOR

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

[Signature]
 Chairman

Dated: may 29 2000