



TRADE PRACTICES ACT 1974

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

by

**Chubb Australia Limited
ACN 000 096 122**

Background

1. CHUBB AUSTRALIA LIMITED ACN 000 096 122 ("Chubb Fire") carries on business in Queensland. Chubb Fire's business includes conducting inspections, testing and maintaining fire alarm detection systems ("the services").
2. Between 1 January 1990 and 31 December 1998, Chubb Fire entered into contracts with other parties, including building owners and managers, to perform the services. Each contract obliged Chubb Fire to carry out the services specified in accordance with Australian Standard AS1851 or in accordance with the Fire Protection Industry Association of Australia Limited ("FPIAA") Specification of Inspections Testing and Maintenance as applicable. AS1851 and the FPIAA Specification required monthly and annual inspection, testing and maintenance.
3. Between 1 January 1990 and 31 December 1998, Chubb Fire:
 - (a) failed to perform all services in accordance with the contracts;
 - (b) had inadequate systems to verify that the services had been performed in accordance with the contracts; and
 - (c) knew of the matters in paragraphs (a) and (b).

178

4. Following an investigation, the Australian Competition & Consumer Commission ("ACCC") considers that Chubb Fire contravened the *Trade Practices Act 1974* ("the Act") in that Chubb Fire contravened sections 52 and 53(aa) of the Act by;
 - (a) representing to customers that it would perform the services in accordance with AS1851 or the FPIAA Specification without having reasonable grounds for making that representation;
 - (b) falsely representing that the services to be supplied under the contract were of a standard or grade to comply with AS1851 or the FPIAA Specification;
 - (c) impliedly representing to customers that they could properly issue certificates of maintenance under the Building Fire Safety Regulation 1991 when it had not conducted the necessary inspection and testing to enable it to do so; and
 - (d) failing to supply the services in accordance with AS1851 or the FPIAA Specification after representing to customers that it would so supply the services.

5. The ACCC has brought to Chubb Fire's attention its view that the conduct referred to in paragraph 4 above contravened sections 52 and 53(aa) of the Act. The ACCC and Chubb Fire subsequently met and discussed the ACCC's opinion and Chubb Fire provided materials and information to the ACCC to assist its investigations and aid the resolution of this matter.

6. Chubb Fire admits that the conduct referred to in paragraph 4 contravened the Act and states that it has now ceased the conduct.

TJG 

Undertakings

LG
Ar

7. Chubb Fire makes the following undertakings for the purposes of section 87B of the Act in respect of its conduct in Queensland relating to the services:

7.1 Compensation

7.1.1 Chubb Fire will:

- (a) cause a review to be undertaken within 14 days of acceptance of these undertakings of all contracts to identify every instance in which services were not supplied in accordance with those contracts for the period 1 January 1996 to 31 December 1998;
- (b) within 30 days of acceptance of these undertakings write to all customers identified in that review as having not received service in accordance with the contracts in terms of the draft letters at annexure AA to these undertakings and offer compensation to them in accordance with clause 7.1.2;
- (c) within 4 weeks of acceptance of these undertakings place two advertisements in the *Courier-Mail* newspaper in the form of annexure BB hereto, or such other form as may be approved by the ACCC, the said advertisement to be:
 - (i) at least 1/4 page in size;
 - (ii) no smaller than 14 point type; and
 - (iii) published on one weekend and on a weekday within the first 6 pages of the newspaper;

TJS

- (d) provide compensation, in accordance with paragraph 7.1.2, to any customer which identifies instances of services not supplied to it in accordance with a contract (whenever occurring and whether identified in the review or not) and is able to provide documentary evidence of them, whether by logbooks or other means; and
- (e) supply to the ACCC within 60 days of acceptance of these undertakings a list of addresses for each customer identified in the review and to whom a letter has been sent as required by clause 7.1.1(b).

7.1.2 The value of the compensation will be as follows:


- (a) For each contract in which the annual service was not supplied, 45% of the total value of the contract for the year in which the service was not supplied; and
- (b) For each contract in which a monthly service was not supplied, one eleventh of 55% of the total value of the contract for the year for each month in which the service was not supplied.

7.1.3 The compensation will be offered to customers as follows:

- (a) for current customers as money or free service or credit to the value of the missed service; and
- (b) for past customers as money.

7.2 **Management Control Program**

7.2.1 Chubb Fire has implemented and will maintain for at least two years from the date of these undertakings a Management Control Program in respect of the services which:

TJG 

- (a) enables Chubb Fire to monitor on a monthly basis both the services it is to carry out and the services it has in fact carried out; and (b) provides for Chubb Fire to make a refund or give a credit to each customer in respect of whom:
 - (i) in the case of an annual service, Chubb Fire fails to provide that service within 8 weeks of the time contracted for it to be provided; and
 - (ii) in the case of a monthly service, Chubb Fire fails to provide that service within one week of the end of the month in which that service was contracted to be provided.

7.2.2 Within 30 days of the end of each twelve month period and for two years from the date of acceptance of these undertakings Chubb Fire will report to the ACCC on:

- (a) Chubb Fire's compliance with these undertakings in the previous twelve months;
- (b) the number of and nature of services not provided within the times specified in para 7.2.1. (b), the dates those services were due, the dates they were provided, the amounts of any refunds paid or credits given and the persons to whom such refunds were paid or credits were given.

7.2.3 Chubb Fire will use its best endeavours to arrange for its officers, employees and agents to be introduced to and to use a compliance program, such as the *Best and Fairest* educational program from the ACCC, insofar as it relates to Part V of the Act and calculated to have the relevant officer, employee or agent conversant with Part V of the Act to a level where:

- (a) officers, employees and agents can avoid obvious

TJA

contraventions and can identify more complex potential trade practices problems for referral to the appropriate person in Chubb Fire;

- (b) persons in Chubb Fire responsible for compliance infrastructure can effectively address obvious contraventions and can identify more complex potential trade practices problems for referral to the Chubb Fire Compliance Officer; and
- (c) the Chubb Fire Compliance Officer can address more complex trade practices issues and, if that person is not legally qualified and able to give the relevant advice, identify issues which require referral to Chubb Fire solicitors.

7.3 **Compliance program upgrade**

Chubb Fire will commission and implement within six months of the date of these undertakings an upgrade of its trade practices compliance program to comply with, at a minimum, the AS3806 and will provide a copy of the program to the ACCC within three months of the date of these undertakings.

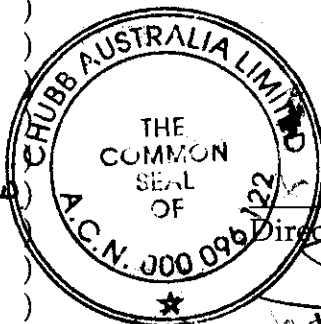
Acknowledgments

8. Chubb Fire acknowledges that:

- (a) the ACCC will make these undertakings available for public inspection;
- (b) the ACCC will from time to time publicly refer to these undertakings; and
- (c) these undertakings in no way derogate from the rights and remedies available to any other person arising from the alleged conduct identified in these undertakings.

IN WITNESS of these undertakings and this agreement:

The common seal of)
Chubb Australia Limited)
ACN 000 096 122 was)
affixed by authority of)
resolution of the Board)
of Directors in the)
presence of P. Somesima)
a Director and)
T. Gallagher Secretary /)
Director for this 7th)
day of March 2000)



[Signature] Director
[Signature] Secretary/Director

ACCEPTED by the Australian Competition and Consumer Commission pursuant to Section 87B of the Act.

[Signature]
.....
(Professor Allan Fels)

Chairman

This 28 day of MARCH 2000.

TG [Signature]

ANNEXURE AA

Form of letter to all customers (clause 7.1.1(b))

Dear Customer,

TRADE PRACTICES BREACHES AND COMPENSATION ENTITLEMENT

Recently the Australian Competition and Consumer Commission (ACCC), with the co-operation of Chubb Australia Limited (trading as Chubb Fire), investigated Chubb Fire's fire protection services for its customers in respect of the servicing, testing and maintenance of fire alarms.

In the course of the ACCC investigations it was confirmed that servicing, testing and maintenance of fire alarms was not always completed according to contracts with our customers.

Chubb Fire was already investigating and dealing with these issues internally when they were raised by the ACCC. However, in light of the deficiencies in certain of our services, Chubb Fire has admitted that it has breached sections 52 and 53(aa) of the *Trade Practices Act* 1974 and the ACCC has taken proceedings in relation to those breaches.

Chubb Fire sincerely regrets any service failures and assures you that we have taken appropriate measures to address the issues raised.

As part of our undertakings to the ACCC we have reviewed all contracts for our customers between 1996 and 1998 and identified you as a customer who did not receive a service according to your contract for service, testing and maintenance of fire alarms. We have agreed to compensation for our servicing shortfalls according to the following formula:

- (a) For each contract in which the annual service was not supplied we will pay 45% of the total value of the contract for that year; and
- (b) For each contract in which a monthly service was not supplied we will pay one eleventh of 55% of the total value of the contract for that year, for each service that was not provided.

According to our records you are entitled to the following compensation:

Service omitted (eg monthly service)	Date due (eg March 1997)	Value (eg \$200)
.....

Please note that Chubb Fire has only checked its records back to 1 January 1996. If you believe you are entitled to further compensation, either before or since 1 January 1996, please contact us. It will assist if you can provide documentary

evidence to support your claim (eg by reference to the log books maintained at your premises). If you need more information please ring Chubb Fire on 1 800 XXX XXX or the ACCC on (07) 3835 4666.

Customers may accept the compensation as follows:

- (a) Current customers - as money, free services or a credit to your current account; and
- (b) Past customers - as money.

If we do not hear from you within 30 days we shall send you a cheque for the compensation we have calculated you are entitled to.

Chubb Fire's undertaking to the ACCC in no way limits your rights and remedies as a result of the failure of Chubb Fire to provide the servicing, testing and maintenance of fire alarms according to the contract with you.

Chubb Fire looks forward to the future where our initiatives, coupled with our refocus on service excellence will set the benchmark for others in the fire protection industry.

Yours sincerely

CHUBB AUSTRALIA LIMITED
trading as Chubb Fire

TJG 

ANNEXURE BB

Copy of advertisement to be placed according to clause 7.1.1(c).

TJG 

Remember paying for all those inspections and tests on your fire protection systems?

There's a possibility they were never done.

The Australian Competition and Consumer Commission has found irregularities among some Queensland fire protection companies. Some have not been providing all the regular inspections or maintenance and testing of alarms, hydrants and sprinkler systems they have been paid for.

We have made approaches to these companies and they have agreed to either refund money paid for services not provided or offer credits to people affected by their conduct.

But how can you know whether or not you have received the services you paid for? Simply check the service log book in the fire panel of your premises as soon as possible.

If you find you have been charged for services that have not been recorded, contact your fire protection company. If they don't give you a satisfactory response or if you want more information, contact the ACCC on **3835 4666**.

