

# TRADE PRACTICES ACT 1974

## UNDERTAKING GIVEN TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION FOR THE PURPOSES OF SECTION 87B

BY

SHINN FU (AUSTRALIA) PTY LTD – ACN 065 304 743

### BACKGROUND

1. Shinn Fu (Australia) Pty Ltd (“Shinn Fu”), ACN 065 304 743, is incorporated in the State of Victoria. Shinn Fu is principally an importer and distributor of jacks and associated products manufactured by the Shinn Fu Corporation, Taiwan.
2. Shinn Fu distributes, as part of its product range, a variety of vehicle and trolley jacks to distributors and resellers across Australia. Two such jacks (“the jacks”) which Shinn Fu distributes across Australia are the:
  - Super Works Scissor Jack (1000kg); and
  - Pro-Lift Scissor (pantograph) Jack (750kg).
3. Vehicle jacks with a nominated capacity up to and including 8 tonnes and trolley jacks with a capacity up to and including 2.5 tonnes that are sold in Australia are bound by mandatory consumer product safety standards, Australian/New Zealand Standard *AS/NZS 2693:1993 (vehicle jacks)* and *AS/NZS 2615:1995 (hydraulic trolley jacks)* (“the Standards”).
4. The Standards aim to reduce the risk of injury and death resulting from the improper use or failure of these products through the establishment of performance requirements and safe usage directions. Under the Standards, it is a supplier’s responsibility to ensure their product complies with the mandatory requirements. In particular, the Standards prescribe a number of information requirements, which include the following:
  - Vehicle jacks must be permanently marked with a label containing the manufacturer or distributor’s name, the nominated capacity of the jack (in kilograms), clear and adequate usage instructions, fluid requirements for hydraulic jacks, and a warning notice to the following effect:

**“WARNING: DO NOT GET UNDER A VEHICLE THAT IS SUPPORTED ONLY BY A JACK: USE VEHICLE SUPPORT STANDS”.**

- Trolley jacks must be permanently marked with a label containing the nominated capacity of the jack (in kilograms), clear and adequate usage instructions, hydraulic fluid requirements, the name and address of the manufacturer, importer or supplier, the manufacturing batch identification and a warning notice (preceded by an exclamation mark enclosed in a triangle) to the following effect:

**“USE ONLY ON HARD LEVEL SURFACES. DO NOT GET UNDER A VEHICLE THAT IS ONLY SUPPORTED BY A TROLLEY JACK – USE SUPPORT STANDS”.**

- If the vehicle and trolley jacks are supplied in packaging, the packaging must be clearly marked with the nominated safe working load of the jack (in kilograms), and the minimum and maximum height of the jack head cap in millimetres.
  - Vehicle and trolley jacks must be supplied with written instructions for maintenance and assembly, and safe usage instructions including the following:
    - The jack should be used on a hard level surface and be free to roll (in the case of trolley jacks), or should be used on level firm ground wherever possible (in the case of vehicle jacks).
    - The wheels should be chocked.
    - No person should remain in a vehicle that is being jacked.
    - No person should get bodily under a vehicle that is supported only by a jack.
    - The vehicle owner’s manual should be consulted prior to the jacking of the vehicle.
5. In May and June 2000, the Australian Competition and Consumer Commission (“the Commission”) conducted a survey of retail outlets to monitor supplier compliance with the Standards.
  6. In May 2000, Super Cheap Auto, Macgregor, was found to be stocking quantities of the Super Works Scissor Jack (1000kg) which did not meet the mandatory requirements of the Standards. Shinn Fu had supplied quantities of the Super Works Scissor Jack (1000kg) to Super Cheap Auto at an earlier date.
  7. In particular, the Super Works Scissor Jack (1000kg) was found to have labelling which did not contain the mandatory safety warning **“WARNING: DO NOT GET BODILY UNDER A VEHICLE THAT IS SUPPORTED ONLY BY A JACK: USE VEHICLE SUPPORT STANDS”**, which must be permanently affixed to the jack.

8. The Commission telephoned Super Cheap Auto on 5 May 2000 and wrote to Shinn Fu on 2 June 2000 advising it was of the view that both parties had contravened the *Trade Practices Act 1974* ("the Act").
9. On 8 May 2000, Super Cheap Auto advised that they had issued a communication to all stores to remove the Super Works Scissor Jack (1000kg) from sale.
10. In June 2000, Super Cheap Auto commenced a series of recall notices for the 1000kg Super Works Scissor Jack in major newspapers in Queensland, New South Wales and the Australian Capital Territory.
11. On 8 June 2000, Shinn Fu advised that approximately 540 1000kg Super Works Scissor Jacks had been provided to Super Cheap Auto. Super Cheap Auto is the only company to which Shinn Fu supplies the 1000kg Super Works Scissor Jack. Shinn Fu advised the Commission that it had searched through existing label stock and would dispose of any incorrect labels if and when any such labels were found and that all future stock will be correctly labelled in compliance with Australian safety standard requirements. Shinn Fu also advised the Commission that the correct labels had been received by Super Cheap Auto to enable their non-complaint jacks to be re-labelled.
12. In June 2000, K-Mart, Kipparing, was found to be stocking quantities of the Pro-Lift Scissor (pantograph) Jack (750kg) which did not meet the mandatory requirements of the Standards. Shinn Fu had supplied quantities of the Pro-Lift Scissor (pantograph) Jack (750kg) to K-Mart at an earlier date.
13. In particular, the Pro-Lift Scissor (pantograph) Jack (750kg) was also found to have labelling which did not contain the mandatory safety warning "WARNING: DO NOT GET BODILY UNDER A VEHICLE THAT IS SUPPORTED ONLY BY A JACK: USE VEHICLE SUPPORT STANDS", which must be permanently affixed to the jack.
14. The Commission wrote to K-Mart Australia Pty Ltd on 5 July 2000 and to Shinn Fu on 28 July 2000 advising of its findings as it was of the view that both parties had contravened the *Trade Practices Act 1974* ("the Act").
15. Shinn Fu acknowledges that section 65C of the Act prohibits a corporation from supplying goods that do not comply with a prescribed consumer product safety standard, and that it has contravened this provision in the supply of the jacks.
16. Given that Shinn Fu has supplied the jacks to a number of distributors with a broad customer base, and to ensure that it in future supplies no further products that do not meet any mandatory consumer product standards, it provides the following undertakings to the Commission under section 87B of the Act.
17. Since being notified of the contraventions, Shinn Fu has proposed a number of Quality Control measures to maintain product compliance with the mandatory standards. The Commission notes that these measures will form a major part of the Trade Practices Compliance Program detailed in paragraph 20 of the undertakings. Documents detailing these measures are attached and marked Annexure 'A'.

## **COMMENCEMENT OF UNDERTAKINGS**

18. This undertaking comes into effect when:

- a) the undertaking is executed by Shinn Fu; and
- b) the Commission accepts the undertaking so executed.

## **UNDERTAKINGS**

Shinn Fu undertakes to the Commission for the purposes of section 87B that:

19. It will not in future supply any products that do not fully comply with the relevant mandatory consumer product safety and information standards which may apply to such products.
20. Within four months of this undertaking taking effect, it will design, implement and make provision to maintain and audit, at its own expense, a Trade Practices Compliance Program ("Compliance Program") that is in accordance with the Australian Standard for Compliance Programs AS-3806 relating to those provisions of the Act which are relevant to the conduct of its business which:
- a) demonstrates commitment to a policy of compliance and will embed a culture of compliance throughout Shinn Fu;
  - b) analyses and responds to the trade practices matter resulting in this undertaking;
  - c) identifies risk areas for trade practices contraventions and develops systems to eliminate or minimise these risks;
  - d) provides that Shinn Fu will take appropriate action concerning any person within its control who is responsible for contraventions of the Act and will not indemnify any such person from the consequences of suit or settlement in respect of any contravention of the Act; and
  - e) provide practical and verifiable training for all relevant staff and management so that contraventions and potential contraventions of the Act may be prevented or otherwise detected, referred and acted upon.
21. In respect of 20 above, the Compliance Program will incorporate the following:

### **Commitment**

- a) Appointment and training of a Compliance Officer with overall responsibility for compliance.
- b) Implementation of adequate procedures to monitor compliance.
- c) Ensuring that all directors and employees, and relevant third parties such as distributors, advertising representatives and other agents, understand compliance procedures.

### **Policy and procedures**

- d) Implementation of procedures to ensure that the compliance policy is understood by directors, employees and agents of Shinn Fu; and
- e) Ensuring procedures are established to assess compliance against predetermined objectives and assessment criteria.

### **Management responsibility**

- f) Identification of processes involved in designing, implementing and maintaining the compliance program and the roles and responsibilities of directors, employees and agents.
- g) Ensuring that line managers are responsible for compliance in their immediate area.

### **Resources and authority**

- h) Ensuring that the Compliance Officer has:
  - A authority, recognition and support from directors and managers;
  - B access to all directors, employees and agents to ensure compliance; and
  - C overall responsibility for design, implementation, maintenance and audit of the compliance program.
- i) Ensuring that directors, employees and agents have access to necessary materials including compliance manuals, training, reference material and databases.
- j) Ensuring that any external compliance service providers have the resources and expertise necessary to carry out the required tasks.

### **Continuous improvement**

- k) Implementation of procedures to ensure that the program is continuously reviewed.

### **Operating procedures for compliance**

- l) Integration of compliance considerations into other aspects of corporate operations such as operation of computer systems, drafting of forms and contracts, administrative procedures, financial evaluations, and performance evaluation of directors, employees and agents.

## **Training**

- m) Implementation of a practical and easily understood compliance training system for relevant staff which is:
- A integrated into induction courses;
  - B reviewed at least every six months;
  - C participatory;
  - D verifiable by independent third parties;
  - E framed to reflect areas of risk; and
  - F part of line and senior manager development.

## **Complaints handling system**

- n) Implementation of a visible and accessible complaints handling system which complies with Australian Standard AS 4269 when read together with Appendix A to Australian Standard AS 3806.

## **Record keeping**

- o) Keeping accurate record of instances of compliance failure and complaints, and of action taken to redress such instances.

## **Disciplinary policy**

- p) Implementation of a disciplinary policy for contraventions of the Act by directors, employees and agents, and publication of the policy to all such persons.
- q) Ensuring that compliance is integrated into performance reviews for employees.

## **Identification and rectification**

- r) Development of a system to identify and classify instances of compliance failure and complaints so that systemic and recurring problems are rectified.

## **Reporting**

- s) Ensuring that compliance problems are promptly reported to the Compliance Officer.

## **Monitoring and review**

- t) Introduction of a system to monitor and review the effectiveness of the compliance program.

## **Accountability**

- u) Ensuring that the Compliance Officer is accountable to the Directors for compliance issues.

## **Audit of the trade practices compliance program**

- v) Shinn Fu shall cause, at its own expense, an independent audit of its compliance program to be conducted:

- A within twelve months of the time at which this undertaking takes effect;
- B upon each of the first three anniversaries of the time at which this undertaking takes effect; and
- C on any additional occasions as the auditor determines necessary.

- w) The audit will be conducted by a suitably qualified compliance professional who is independent of Shinn Fu and has no conflict of interest or duty in providing audit services to it.

- x) The auditor will review and report in writing on:

- A Shinn Fu's adherence to this undertaking;
- B the particulars of the compliance program, its implementation of the compliance program and the achievement of its objectives; and
- C any recommended changes to the compliance program that may be necessary to ensure achievement of its objectives.

- y) The auditor will provide a copy of the audit report to the ACCC within one week of completion of the audit.

- z) If requested by the ACCC, Shinn Fu will provide forthwith to the ACCC:

- A the name of the auditor;
- B the information upon which it relies in determining the auditor is independent from it; and
- C information showing whether any recommendations by the auditor have been implemented.

## **ACKNOWLEDGEMENTS**

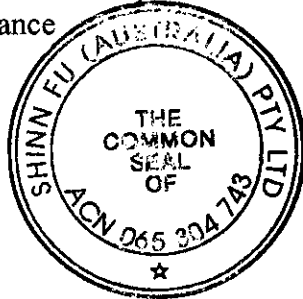
- 22. Shinn Fu acknowledges that the Commission will make this undertaking available for public inspection.

23. Shinn Fu further acknowledges that the Commission will from time to time publicly refer to this undertaking.



**IN WITNESS OF THIS UNDERTAKING AND ITS AGREEMENTS**

The common seal of **SHINN FU (AUSTRALIA) PTY LTD** )  
ACN 065 304 743 is affixed in accordance )  
with its Articles of Association in the )  
presence of: )



.....  
Director

.....  
Director

This *11<sup>th</sup>* day of *DEC.* 2000

Accepted by the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION** pursuant to section 87B of the Trade Practices Act 1974

*AF Shogren*  
.....  
(Professor Allan Fels) **R. F. SHOGBREN**  
Chairman  
This *ninth* day of *January* ~~2000~~ *2001*

ACTING CHAIRMAN: *AF Shogren*

DATE: *9-1-2001*

**SHINN FU (AUSTRALIA) PTY LTD.**

No. 2-4, QUEEN ST., NUNAWADING. VIC. 3131. AUSTRALIA

PHONE: 61-03 9872 6399

FAX:

61-03 9872 6393

E-MAIL: [sfaa@netspace.net.au](mailto:sfaa@netspace.net.au)**THE SAA CONTROL  
PROGRAM FOR  
JACK MARKING, PACKAGING & MANUAL**

TO ACHIEVE THIS PROGRAM, WE DESIGN THE FOLLOWING CONTROL STEPS TO MAKE SURE ALL JACK LABEL, PACKAGING & MANUAL AS 100% COMPLY WITH SAA REQUIREMENT.

**1. BEFORE PRINTING****A. THE JACK LABEL,**

OUR Q.C. DEPARTMENT WILL REQUEST OUR SUPPLIER TO SEND THE DRAWING TO US AND MAKE SURE THE FOLLOWING REQUIREMENT MUST SHOW ON THE LABEL.

SEE ATTACHED WARNING LABEL

**B. THE PACKAGING**

OUR Q.C. DEPARTMENT WILL REQUEST OUR SUPPLIER TO SEND THE DRAWING TO US AND MAKE SURE THE FOLLOWING REQUIREMENT MUST SHOW ON THE PACKAGING

SEE ATTACHED WARNING LABEL

**C. THE MANUAL,**

OUR Q.C. DEPARTMENT WILL REQUEST OUR SUPPLIER TO SEND THE DRAWING TO US AND MAKE SURE THE FOLLOWING REQUIREMENT MUST SHOW ON THE MANUAL.

SEE ATTACHED

2. AFTER OUR Q.C. DEPARTMENT HAS APPROVED THE DRAWING OF LABEL, PACKAGING & MANUAL, THEN OUR SUPPLIER WILL BE AUTHORISED TO PRINT. OUR SUPPLIER WILL ALSO BE REQUESTED TO SEND THE PRINTED LABEL, PACKAGING & MANUAL TO US FOR FINAL APPROVAL BEFORE THEY DISPATCH TO THE PRODUCTION LINE.

3. WHEN OUR ORDER ON THE PRODUCTION LINE, OUR Q.C. PERSON IN OUR OVERSEAS OFFICE WILL BE RESPONSIBLE FOR THE "ON PRODUCTION LINE CHECKING" TO MAKE SURE THE MODEL WITH THE CORRECT LABEL & MANUAL ARE PUT INTO CORRECT PACKAGING.

4. ONCE OUR ORDER IS OFF THE PRODUCTION LINE. OUR Q.C. PERSON IN OUR OVERSEAS OFFICE WILL CONDUCT A "PRE-LOADING CHECKING" BEFORE THE GOODS ARE TO SHIP. THIS CHECKING WILL BE RUN BY RANDOM CHECKING ( 1%) AND THE ATTACHED **FORM A** WILL BE SENT TO OUR Q.C. DEPARTMENT (IN

AUSTRALIA) TO GET THE DELIVERY AUTHORIZATION TO ALLOW OUR SUPPLIER TO SHIP THE GOODS FROM OVERSEAS.

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### 5. THE FINAL CHECKING,

BY THE TIME THE SHIPMENT IS UNPACKED IN OUR WAREHOUSE, WE WILL DO THE RANDOM CHECKING ( 1%) WHICH WILL BASE ON THE ATTACHED **FORM B** TO MAKE SURE THE JACKS MEET THE SAA REQUIREMENT BEFORE THE SHIPMENT BECOME TO OUR STOCK.READY FOR DELIVERY.

# Vehicle Jack

AS/NZS 2693-1993 B/J & SCISSOR JACK

**Jack marking** Jacks shall be permanently and legibly marked with the following information:

- (A) Name and address in Australia/New Zealand of the Manufacturer, importer or other supplier of the vehicle jack
- (B) The nominated capacity stated as ' Safe Working Load...' in kilograms.
- (C) The HEIGHT LOWERED & HEIGHT RAISED in millimeters..
- (D) Clear and adequate operating instructions.
- (E) The manufacturing batch identification.
- (F) A warning notice bearing the words as shown**
- (G) For hydraulic jacks, a statement specifying the correct hydraulic fluid for use with the jack and a requirement that it be kept at the recommend level.

**WARNI  
NG  
USE ONLY ON HARD LEVEL  
SURFACES  
DO NOT GET UNDER A VEHICLE THAT IS  
ONLY  
SUPPORTED BY A  
JACK.  
USE SUPPORT STANDS**

PLS NOTED, ABOVE WARNING WILL ON JACK MARKING & PACKAGING MARKING & INSTRUCTION M/

**Instructions** In addition to the instructions marked upon the jack in accordance with clause 7.1(e), the following shall be supplied with the jack:

(A) *Maintenance instructions*- any necessary procedures for maintenance, including lubrication requirements and details for servicing the hydraulic system, if any.

(B) *Safe usage instructions*-recommendation for safe usage of the jack, including the following:

(i) The jack should be used on level firm ground wherever possible.

(ii) It is recommended that the wheels of the vehicle be chocked, and that no person should remain in a vehicle that is being jacked.

(iii) No person should place any portion of their body under a vehicle that is supported only by a jack; use vehicle support stands.

(iv) The vehicle owner's manual should be consulted prior to the jacking of the vehicle.

**Packaging marking** For general purpose jacks, the following information shall be clearly marked on the packaging of the jack or on a leaflet attached to the jack.

(A) The 'height lowered' being the minimum height of the head cap in millimeters.

(B) The 'height raised' being the maximum height of the head cap in millimeters.

(C) The nominated capacity stated as ' Safe Working Load ...' in kilograms.

(D) If assembly is required, adequate assembly instructions together with a parts list and an exploded diagram of the jack.



