



## **TRADE PRACTICES ACT 1974 - SECTION 87B UNDERTAKING**

### **Person giving undertaking**

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Premier Fire Protection (Qld) Pty Ltd (ACN 050 410 636) ("Premier") and Gregory John Bourke ("Mr Bourke") 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 Premier, and its director and shareholder Mr Bourke ("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 Mr Bourke has undertaken to use his best endeavours to operate Premier in such a manner as to ensure that Premier is able to meet its obligations under the orders to be recommended to the Court, including by tendering and undertaking new fire protection contracting works through Premier rather than Premier Fire Systems Pty Ltd or any other company.

Premier and Mr Bourke have further agreed to provide to the Commission the undertaking contained herein that Premier will implement and maintain a trade practices compliance training program, to ensure, so far as reasonably possible, neither Premier nor its officers or employees are involved in further contraventions of Part IV of the Act.

The Commission has agreed to accept the undertaking from Premier and Mr Bourke under section 87B of the Act.

### **Commencement of undertaking**

1. This undertaking comes into effect when:
  - (a) the undertaking is executed by Premier and Mr Bourke; and
  - (b) the undertaking so executed is accepted by the Commission.

### **Undertakings**

2. Mr Bourke undertakes that:
  - (a) he will use his best endeavours to ensure that Premier complies in all respects with the undertakings it has given herein;
  - (b) he will use his best endeavours to ensure that Premier is able, and at all times remains able, to comply with Premier's obligations to pay pecuniary penalties by the due dates therefor in respect of Federal Court proceedings Q239 of 1999;
  - (c) until the payment by Premier in full of the penalty ordered by the Court, Mr Bourke will take all lawful steps open to him to retain the capacity to cause Premier to tender for and undertake fire protection contracting works to the exclusion of Premier Fire Systems Pty Ltd;
  - (d) until Premier has paid in full the penalty imposed by the Court, Mr Bourke will take all lawful steps open to him to cause Premier rather than Premier Fire Systems Pty Ltd to tender for and undertake all new fire protection contracting work;
  - (e) until payment in full by Premier of the penalty imposed by the Court, Mr Bourke will not resign as director of Premier;
  - (f) until payment in full by Premier of the penalty imposed by the Court, Mr Bourke will take all steps lawfully open to him to cause Premier to pay the instalments of the said penalty when they fall due.

## 3. Premier and Mr Bourke undertake that:

- (a) Premier will implement a trade practices compliance program for staff that is in accordance with the Australian Standard for Compliance Programs AS3806-1998, with particular regard to Part IV of the Act (“the Program”);
- (b) the Program will aim to create a culture of compliance within Premier and to prevent, so far as is reasonably possible, any contraventions of the Act by Premier or by its officers, employees or agents;
- (c) Premier will appoint an appropriately qualified senior officer as the compliance officer with overall responsibility for trade practices compliance;
- (d) the Program will cover all officers, employees and agents of Premier whose duties could result in their being concerned in conduct that might breach the Act;
- (e) the Program will include:
  - (i) a timetable for the Program;
  - (ii) a compliance manual, a copy of which will be distributed to each staff member;
  - (iii) operating procedures, compliance registers and audit documents;
  - (iv) education and training;
  - (v) effective monitoring;
  - (vi) a reporting system;
  - (vii) record keeping, including a report on the implementation and maintenance of the Program to be given to the Commission one year from the date of execution of this undertaking;

- (f) Premier will submit a draft of the Program to the Commission within 30 days of the date of this undertaking;
- (g) Premier will incorporate into the Program, and implement as part of the Program, any reasonable changes to the draft program that are recommended by the ACCC in writing;
- (h) Premier will implement the Program within 30 days of the ACCC advising whether any changes are required to the draft program, as referred to in subparagraph (g) above;
- (i) the Program will remain in force for a minimum period of three years from the date of its implementation.

- 4. Premier and Mr Bourke note that the Commission may make public the terms of this undertaking.
- 5. Premier and Mr Bourke acknowledge that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

EXECUTED on the 20<sup>th</sup> day of February 2001.

The Common Seal of **PREMIER FIRE PROTECTION (QLD) PTY LTD** ACN 050 410 636 was affixed in accordance with its Articles of Association in the presence of: )



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 Signature of authorised person

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 Signature of authorised person

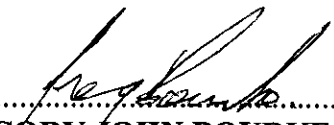
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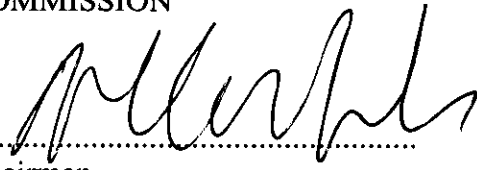
AND SIGNED BY:

  
.....  
**GREGORY JOHN BOURKE**  
Director, Premier Fire Protection (Qld) Pty Ltd

  
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WITNESS

Dated: *20 February* 2001

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION

  
.....  
Chairman

Dated: *Feb 1* 2001