

TRADE PRACTICES ACT 1974

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

by

**FFE Building Services Limited
ACN 000 067 541**

Background

1. FFE Building Services Limited ("FFE") carries on business in Queensland. FFE's business includes conducting inspections, testing and maintaining fire alarm detection systems, fire sprinkler systems and portable fire protection equipment ("the services").
2. Since 1 January 1990 FFE has entered into contracts with other parties, including building owners and managers, to perform the services. Each contract obliged FFE to carry out the services specified in accordance with relevant Australian Standards or in accordance with the Fire Protection Industry Association of Australia Limited ("FPIAA") Specification of Inspections Testing and Maintenance. The Standards and the FPIAA Specification required, inter alia, weekly, monthly, quarterly and annual inspection, testing and maintenance.
3. Since 1 January 1990 FFE has:
 - (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).
4. Following an investigation, the Australian Competition & Consumer Commission ("ACCC") considers that FFE contravened sections 52 and 53 (aa) of the *Trade Practices Act 1974* ("the Act") by;
- (a) representing to customers that it would perform the services in accordance with the Standard 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 the Standard 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 the Standard or the FPIAA Specification after representing to customers that it would so supply the services.
5. FFE admits that the conduct referred to in paragraph 4 contravened the Act and states that it has now ceased the conduct and will consent to injunctions restraining such conduct in future
6. FFE has agreed to compensate its customers as set out in this undertaking. The different categories of compensation reflect that FFE was acquired by its present owners from James Hardie Industries Ltd in late 1995 and that there are no adequate records prior to January 1996 to enable compensation to be assessed. FFE estimates that the total refunds to be made pursuant to this undertaking based on missed services it has already identified are

approximately \$140,000.

7. The parties note that FFE has given undertakings on 15 February 2001 to implement a trade practices compliance program compliant with AS3806 in respect of Part IV of the Act and FFE undertakes to expand that program to include Part V.

Undertakings

8. FFE makes the following undertakings for the purposes of section 87B of the Act in respect of its conduct in Queensland relating to the services.

8.1 Compensation

8.1.1 FFE will:

- (a) cause a review to be undertaken within 7 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 30 September 2001;
- (b) within 14 days of acceptance of these undertakings or 14 days of the making of orders in this matter by the Federal Court, whichever is the later,
 - (i) write to all customers identified in its records shown 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, if they have not yet been paid compensation, offer compensation to them in accordance with clause 8.1.2;
 - (ii) provide a list of all customers identified in that review as not having received service in accordance with the contract to the ACCC, identifying in each case the

amount of compensation believed to be due to them and the address of that customer;

- (c) within 28 days 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 Saturday and on one weekday within the first 6 pages of the newspaper; and
- (d) provide compensation, in accordance with paragraph 8.1.2, 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.

8.1.2 The value of the compensation will be as follows:

Service Missed	Amount to be refunded
Sprinkler Annual	\$126
Sprinkler Quarterly	\$12
Sprinkler Weekly	\$12
Alarm Annual	\$350
Alarm Monthly	\$12

8.1.3 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.

8.1.4 FFE will, from the acceptance of this undertaking until 60 days after the later of the publication of the last advertisement pursuant to clause 8.1.1(c) or the sending of the last customer letter pursuant to clause 8.1.1(b), maintain an 1800 call centre for customers. FFE will maintain a log of all calls and of the action taken in respect of same. The log shall be kept up to date and shall be made available to the ACCC upon request.

8.1.5 If a customer wishes to claim compensation in respect of services not provided, but was not identified pursuant to clause 8.1.1(a) or is unable to provide documentary evidence acceptable to FFE pursuant to clause 8.1.1(d), FFE will nevertheless consider such claim in good faith and make compensation on the basis in clause 8.1.2 according to its best estimate of the number and type of services missed. If the claim is not resolved to the satisfaction of the customer, FFE will advise the ACCC of the claim, the compensation it proposes to pay (if any) and its reasons therefor.

If the customer is unable to agree with FFE as to the amount of compensation (if any) due to the customer, FFE will offer to refer the matter to an independent Senior Counsel, acting as expert, for determination. If this offer is accepted by the customer, the decision of the expert will be binding on FFE and the customer. The costs of such determination will be paid by FFE, unless the determination of the expert is in complete accordance with FFE's contended position, in which case they shall be borne by the customer.

8.2 **Management Control Program**

8.2.1 FFE 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:

- (a) enables FFE to monitor on a monthly basis, through team supervisors attending the sites and inspecting with work done, both the services it is to carry out and the services it has in fact carried out; and
- (b) provides for FFE to make a refund or give a credit to each customer in respect of whom:
 - (i) in the case of an annual service, FFE fails to provide that service within 8 weeks of the time contracted for it to be provided;
 - (ii) in the case of a quarterly service, FFE fails to provide that service in the quarter it was contracted to be provided;
 - (iii) in the case of a monthly service, FFE fails to provide that service within one week of the end of the month in which that service was contracted to be provided; and
 - (iv) in the case of a weekly service, FFE fails to provide that service within the week in which that services was contracted to be provided.

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

- (a) FFE's compliance with these undertakings in the previous twelve months;
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- (b) the number of and nature of services not provided within the times specified in para 8.2.1. (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.

8.2.3 FFE will use its best endeavours to arrange for its officers, employees and agents to be introduced to and to use a compliance program that complies with Australian Standard 3806, 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 contraventions and can identify more complex potential trade practices problems for referral to the appropriate person in FFE;
- (b) persons in FFE responsible for compliance infrastructure can effectively address obvious contraventions and can identify more complex potential trade practices problems for referral to the FFE Compliance Officer; and
- (c) the FFE 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 FFE solicitors.

8.3 **Compliance program upgrade**

FFE will commission and implement within three calendar months of the date of these undertakings an upgrade of the trade practices compliance program it implemented pursuant to undertakings given to the ACCC on 15 February 2001 to include Part V of the Act and will provide a copy of the program to the ACCC within three calendar months of the date of these undertakings.

Acknowledgments

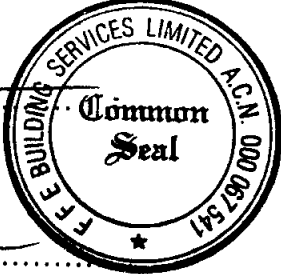
- 9. FFE acknowledges that:
 - (a) the ACCC will make these undertakings available for public inspection;
 - (b) the ACCC will from time to time publicly refer to these undertakings; and
 - (c) these undertakings in no way derogate from the rights and remedies available to any other person arising from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

IN WITNESS of these undertakings and this agreement:

The common seal of FFE Building Services Ltd ACT 000 067 541 was affixed by authority of resolution of the Board of Directors in the presence of a Director and Secretary/Director this *17th* day of *May* 2002

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Director

.....
Secretary/Director



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

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(Professor Allan Kels)
Chairman

This *22nd* day of *May* 2002

ANNEXURE AA

Form of letter to all customers (clause 8.1.1(b))

Dear Customer,

TRADE PRACTICES BREACHES AND COMPENSATION ENTITLEMENT

Recently the Australian Competition and Consumer Commission (ACCC), with the co-operation of FFE Building Services Limited, investigated FFE's fire protection services for its customers in respect of the servicing, testing and maintenance of fire alarms, fire sprinkler systems and portable fire protection equipment.

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.

In light of the deficiencies in certain of our services, FFE has admitted that it has breached sections 52 and 53(aa) of the *Trade Practices Act 1974* (which respectively prohibit misleading and deceptive conduct and falsely representing that services are of a particular quality or standard) and the ACCC has taken proceedings in relation to those breaches.

FFE 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 1 January 1997 and 30 September 2001 and identified you as a customer who did not receive a service according to your contract for service, testing and maintenance of fire alarms and sprinklers. We have agreed to compensation for our servicing shortfalls according to the following formula:
[We have previously sent you compensation according to the following formula:]

Service Missed	Amount to be refunded
Sprinkler Annual	\$126
Sprinkler Quarterly	\$12
Sprinkler Weekly	\$12
Alarm Annual	\$350
Alarm Monthly	\$12

Please note that FFE has only checked its records back to 1 January 1997. If you believe you are entitled to further compensation, either before or since 1 January 1997, 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 FFE on 1 800 007 333 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.

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

Yours sincerely

FFE Building Services Limited

ACCC ANNOUNCEMENT

Did you pay FFE for inspections and tests on your fire protection systems?

There is a possibility they were never done.

The Australian Competition and Consumer Commission has found irregularities amongst some Queensland fire protection companies. It found that Fire Fighting Enterprises (FFE) had not been providing all the regular inspections or maintenance and testing of alarms, hydrants, portables and sprinkler systems it had been paid to do.

The ACCC made approaches to FFE and it has agreed to either refund money paid for services not provided, or offer credits to people affected by their conduct.

So how do you know if you got 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 FFE on **1800 007 333**. If they do not give you a satisfactory response, or if you want more information, contact the ACCC on **1300 302 502**.



Australian Competition & Consumer Commission

