

# UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN UNDER SECTION 87B

BY

**CUSTOM SECURITY SERVICES PTY LTD**

**(ABN 93 052 469 164)**



## **PERSON GIVING UNDERTAKING**

1. This undertaking is given to the Australian Competition and Consumer Commission by Custom Security Services Pty Ltd, ACN 052 469 164, of 8 Salkauskas Crescent, Lyneham, in the Australian Capital Territory, under section 87B of the *Trade Practices Act 1974*.

## **DEFINITION**

“Act” means to the *Trade Practices Act 1974*

“Commission” means the Australian Competition and Consumer Commission

“Contract” means a contract for the provision of security services/monitoring

“CSS” means Custom Security Services Pty Ltd

“Customers” refers to those people/businesses that, at the time of entering into a Contract with CSS, did not receive arming and disarming reports as part of the Contract.

## **BACKGROUND**

2. CSS provides security alarm systems and security monitoring services.
3. The Commission received numerous complaints in July 2001 concerning upgrades to security systems of existing CSS Customers. The upgrades that commenced in early 2001 provided an arming and disarming reporting capacity that necessitated daily, as opposed to weekly, testing of security facilities with resultant increases in ongoing telephone charges.
4. Invoices for \$99 to cover the cost of the upgrade were subsequently issued, and in many cases this was the first time Customers became aware of the upgrade. The Commission considered that issuing invoices for upgrades that were not authorised or sought by CSS Customers was an assertion of a right to payment for unsolicited services and a breach of section 64 of the Act.
5. In many cases, CSS Customers were not advised of the impact that the security system upgrade would have on increased monitoring and consequent telephone charges. This failure to disclose the full cost of the new services was likely to mislead consumers with respect to the price of goods or services and therefore a breach of subsection 53(e) of the Act.

6. CSS also wrote to its Customers and represented that there was a 'need' for these reports for 'all' security systems because of the Australian Standard for Intruder Alarm Systems AS 2201.1-1999, but failed to advise of the non-mandatory nature of this Standard. The Commission was concerned that the correspondence sent to Customers contained misleading representations in breach of subsection 53(f) concerning the need for goods or services and that the failure to disclose the non mandatory nature of AS 2201.1-1999 was conduct in breach of section 52.
7. Further, correspondence to Customers contained a suggestion that insurers may deny claims against their policies because of the refusal to accept the service or upgrade. The Commission considered that this was a misleading representation concerning the exclusion or effect of a right or remedy and a breach of subsection 53(g) of the Act.
8. By virtue of this undertaking, CSS will:
  - (a) Immediately cease all demands for payment in respect of invoices issued for Customers' security system upgrade;
  - (b) Write to all Customers in terms attached to this undertaking at Schedule A;
  - (c) Upon the request of any Customer, restore the security system to the same or higher level of service at no charge; and
  - (d) Undertake to implement by **31 July 2002** a Trade Practices Compliance program for Part V of the Act, in accordance with Australian Standard 3806 and provide the Commission with independent reports on its implementation after 12 and 24 months.
9. CSS acknowledges that the conduct constituted representations that are in breach of sections 52, 53 and 64 of the Act.
10. CSS has offered the Commission this undertaking in accordance with section 87B of the Act.

## **COMMENCEMENT OF UNDERTAKING**

12. This undertaking comes into effect when:
  - (i) the undertaking is executed by CSS; and
  - (ii) the Commission accepts the undertaking so executed.

## **UNDERTAKINGS**

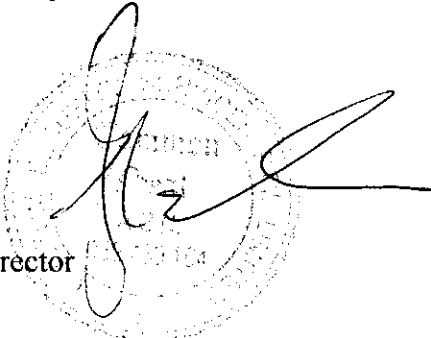
13. CSS gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*:-
  - (a) CSS will immediately cease making demands for payment for Customers' security system upgrades;
  - (b) Write to all Customers in terms attached to this undertaking at Schedule A by **15 July 2002**.

- (c) Upon the receipt of the request of any CSS Customer, restore the security system to the same level of service, for which the Customer originally contracted, at no charge;
- (d) Provide a refund or re-credit, at the Customer's option, of any money paid for by CSS Customers in respect of the upgrade, including any charge incurred as a result of telephone charges over and above those charges that might reasonably have been incurred had the upgrade not taken place;
- (e) Undertake to implement by **31 July 2002** a Trade Practices Compliance program for Part V of the Act, in accordance with Australian Standard 3806 and provide the Commission with an annual review and independent reports on its implementation after 12 and 24 months. As part of the Compliance program, CSS must revise its promotional activities to ensure that prospective customers are made aware of the full cost of CSS' monitoring services, including telephone charges; and
- (f) Provide a statutory declaration to the Commission by **31 July 2002** that Custom Security Services has complied with this undertaking;

## **ACKNOWLEDGMENTS**

- 14. CSS acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission will, at its discretion, from time to time, publish and publicly refer to this undertaking.
- 15. CSS acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from the company's conduct.

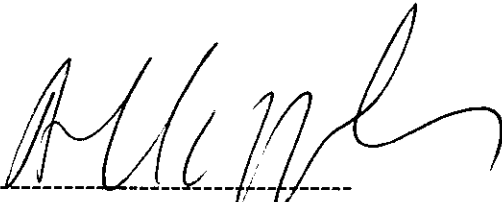
IN WITNESS of these undertakings and its agreement the common seal of Custom Security Services Pty Ltd, ACN 052 469 164 was hereunto affixed by authority of the Board of Directors in the presence of

  
Director

  
Director/Secretary

Dated this 14<sup>TH</sup> day of JUNE 2002

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974



Professor Allan Fels

Chairman

Dated this 18 day of June 2002

## PROPOSED LETTER TO CLIENTS

### MONITORING SYSTEM UPGRADE

I am writing to you at the request of the Australian Competition and Consumer Commission (the ACCC) to clarify and provide further information regarding the monitoring system upgrade provided to your security system last year, and advise you of the availability of a recredit or refund.

As you may recall, Custom Security Services (CSS) commenced upgrade to its monitoring system in March 2001, to provide opening and closing reports to all customers on a daily basis. We took this step, because we believed (and still do) that we want to be able to provide the most comprehensive service to our clients that we could, and that we wish to be able to provide our clients with a complete history of their alarm activations.

However, the upgrade was generally undertaken without prior consultation and invoices for \$99 were issued to customers to cover the cost of the upgrade. While your contract allows CSS to upgrade your security system, we recognise that imposing the upgrade without prior consultation and issuing invoices may have breached the *Trade Practices Act 1974*.

CSS sent letters to all customers in the latter half of 2001 in an endeavour to explain our reasons for undertaking the upgrade. Some statements in those letters were capable of being misunderstood. In particular, the following advice was provided:

- The upgrade is required by clause 4.3 of the Australian Standard for Intruder Alarm Systems AS 2201.1-1999; and
- Refusal to accept the upgrade may lead to insurers denying insurance claims.

CSS acknowledges that these statements may have misled customers as to the true position. Accordingly, we wish to advise that AS 2201.1-1999 is not a mandatory standard and our interpretation of clause 4.3 that security systems require daily reporting is not an interpretation necessarily accepted by the Industry as a whole.

In relation to insurance, we believe that your duty of "utmost good faith" to disclose all known facts to your insurer is enhanced when we are able to assist an insurer with a complete history of alarm activations. We have received advice from a number of insurance companies that they look more favourably on burglary alarms when it is possible to identify with precision when an alarm is turned on and by whom. However, we cannot speak for each and every insurer and we appreciate that you may have received differing advice from your broker or underwriter. If you have continuing concerns you should discuss this with your insurer.

CSS accepts that its misrepresentations and non-disclosure of the information above were likely to be in breach of the *Trade Practices Act 1974*, and has agreed with the ACCC that CSS should write to you giving full disclosure. To ensure that you have the opportunity to be fully informed before making a decision on whether:

- (a) you wish to maintain the current system that allows opening or closing reports; or
- (b) you wish to revert to the security system as it was prior to the upgrade.

In this regard you should be aware that the upgrade to daily reporting will increase telephone charges due to higher volume of calls and be aware that CSS receives rebate for calls your security system makes to our monitoring centre, including calls for opening and closing reports.

CSS has offered a court enforceable undertaking to the ACCC of the following:

- a) Offer refund/credit to customers who paid the invoice of \$99, of which most customers will already have received a credit to their account;
- b) Offer refund/credit to customers for the increased telephone charges; and
- c) Offer customers the option to remove the opening and closing reporting capability at no cost.

We therefore attach a form for you to complete, at your option, indicating whether:

- a. you would like to be removed from, or remain connected for, opening and closing reports (*this will, of course, mean that you will continue to incur 1300 phone charges*)
- b. if, in the event that you choose to be removed from this service, you wish prior charges to be re-credited or re-funded – this will mean that you will need to send us an itemised copy of your telephone accounts, for verification purposes; and/ or
- c. if you would like us to offer you a re-credit or refund of the \$99.00 service upgrade charge. (Most will have received this already).

Would you please let us have the forms back by the close of business on 19<sup>th</sup> July, 2002

Please do not hesitate to contact us if you wish to discuss these, or any other matters further.

Yours faithfully

ROBERT NEWHAM  
MANAGING DIRECTOR

Attachment: Form

CSS LOGO

**REPROGRAMMING OF SECURITY SYSTEM  
RECREDIT OR REFUND OF CHARGES**

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Name: .....

Address:  
.....  
.....  
.....

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**(1) I AM HAPPY WITH THE UPGRADED SERVICE**

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**OR**

**(2) WOULD YOU PLEASE CARRY OUT THE FOLLOWING SERVICES:**

*Re-program my alarm system to remove opening and closing reports*

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*Credit my account with telephone charges as per the attached phone account(s)*

**OR**

*Refund the telephone charges as per the attached phone account(s)*

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*Credit my account with the amount of \$99.00 for the service upgrade fee*

**OR**

*Refund the amount of \$99.00 for the service upgrade fee*

Date: .....

Signature of Client: .....