

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

BY

**TROPICAL HOMES (TOWNSVILLE) PTY LTD (ACN 009 754 947)**

**PERSON GIVING UNDERTAKING**

- 1) This undertaking is given to the Australian Competition and Consumer Commission ('the Commission') by Tropical Homes (Townsville) Pty Ltd (ACN 009 754 947) of 34 Margaret Street, Ayr, in the State of Queensland under section 87B of the *Trade Practices Act 1974* ('the Act').

**BACKGROUND**

- 2) Tropical Homes (Townsville) Pty Ltd ('Tropical Homes') is incorporated in Queensland and carries on a business in the geographic area surrounding the city of Townsville. Tropical Homes carries on the business of building and marketing of new homes and land.
- 3) In July 1999, Tropical Homes caused to be placed two advertisements within the *Townsville Bulletin* on Saturday 24 July 1999 and Saturday 31 July 1999.
- 4) The advertisement of 24 July 1999 appeared on page 13, was printed in colour and was approximately 15cm in width and 30cm in depth. A copy of the advertisement of 24 July 1999 is attached at **annexure A**. The advertisement contained as its heading, in large print, the representation:

**“Beat the GST Offer! With new homes and land due to increase by up to 15%, this is your opportunity to make huge savings by purchasing one of these outstanding packages.”**

- 5) The advertisement of 31 July 1999 appeared on page 27, was printed in colour and was approximately 15cm in width and 18cm in depth. A copy of the advertisement of 31 July 1999 is attached at **annexure B**. The advertisement contained in its text the representation:

**“With prices predicted to rise by up to 15% with the introduction of the GST, don't wait any longer. Take advantage of Tropical's Hassle Free Investment Offer today.”**

- 6) On 6 August 1999 the Commission wrote to Tropical Homes (letter dated 13 July 1999) alerting it to the Commission's position that the representations contained within the Tropical Homes advertising of 24 July 1999 and 31 July 1999 ('the Representations') were possibly misleading contrary to section 52 of the Act or may have constituted a false representation under section 53(e) of the Act.

7) In particular, the Commission informed Tropical Homes of its views that the representations:

(a) “With new homes and land due to increase by up to 15%...”; and

(b) “With prices predicted to rise up to 15% with the introduction of the GST...”

represents that the price of new homes and land will rise by up to 15% once the Goods and Services Tax (‘GST’) is introduced, where the Commission believes that the actual position is that the introduction of the 10% GST and the removal of the wholesale sales tax on various inputs, will be likely to result in an increase in the price of new homes and land by less than 10%.

8) In August 1999, but prior to receiving the Commission’s letter of 6 August 1999, Tropical Homes caused to be placed an advertisement within the *Townsville Bulletin* on Saturday 7 August 1999. The advertisement of 7 August 1999 contained the representation:

**“Prices will rise up to 10% with GST.”**

9) After being informed by the Commission of the possible contravention of section 52 and section 53(e) in respect of the Representations, Tropical Homes agreed to cease the use of the Representations contained in paragraphs 4 and 5, in all of its advertising, the publication of a corrective advertisement and the implementation of a trade practices compliance program.

10) Tropical Homes is of the view that the price of new homes is likely to rise by less than 10% once the GST is introduced based on industry sources. As such, Tropical Homes unconditionally withdraws any denial that the Representations were likely to mislead consumers.

## **COMMENCEMENT OF UNDERTAKING**

11) This undertaking comes into effect when:

(i) the undertaking is executed by Tropical Homes; and

(ii) the Commission accepts the undertaking so executed.

## UNDERTAKINGS

12) Tropical Homes gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*:-

### *Conduct Undertakings*

- i) Tropical Homes will refrain from causing to be published any representation which states or implies that the imposition of the GST will result in the price of a new house or land rising above 10% in any newspaper or other media; and
- ii) Tropical Homes will not make positive representations in relation to the likely increase in the price of new homes or land where it does not have reasonable grounds for making the representations.

### *Corrective Advertisement Undertaking*

- iii) Tropical Homes will, at its own expense, place a corrective advertisement ('the Corrective Advertisement') on or before page 13 of the *Townsville Bulletin* on the first possible Saturday after the execution of these undertakings, in the same terms, form, design and content of **annexure C**.
- iv) The Corrective Advertisement will:
  - (a) be no less than 15cm in width by 14cm in depth; and
  - (b) be located on the right hand side of the page.

### *Trade Practices Compliance Program*

- v) Tropical Homes will implement a trade practices compliance program ('the Program') in accordance with **annexure D**.

## ACKNOWLEDGMENTS

- 13) Tropical Homes acknowledges the Commission will make this undertaking available for public inspection.
- 14) Tropical Homes further acknowledges that the Commission will, from time to time, publicly refer to this undertaking.
- 15) Tropical Homes acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from Tropical Home's conduct.
- 16) Tropical Homes further acknowledges that the information referred to at paragraph 14 of annexure D and the compliance program as in force from time to time will be held with this undertaking on the public register.

Signed on behalf of TROPICAL HOMES (TOWNSVILLE) PTY LTD by

WILFRED ANTHONY JAPUDAS

W Japudas

2/9/99

Print Name (Director/Secretary)

Signature

Date

Print Name (Director/Secretary)

Signature

Date

Print Name (Director/Secretary)

Signature

Date



2/9/99

Company Seal

Date

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

Allan Fels

(Professor Allan Fels)

Chairperson

This

7<sup>th</sup>

day of

February

1999

Annexure A

Tropical Homes Advertisement – 24 July 1999

Home  
Inspect Today

# Beat the GST Offer!

With new homes and land due to increase by up to 15%, this is your opportunity to make huge savings by purchasing one of those outstanding packages.

**GST Offer includes:**

- Free:** Air Conditioning to all bedrooms
- Free:** Pergola - Fully paved & painted
- Free:** Jarra Outdoor Setting
- Free:** BBQ - 4 burner and trolley
- Plus:** *all of the features that others charge extra for.*
  - ✓ Carpets/Tiles
  - ✓ Fans
  - ✓ Screens
  - ✓ Fencing
  - ✓ Driveway
  - ✓ Landscaping
  - ✓ Automatic Sprinklers

Ultimate of a modern lifestyle. Available in Kirwan and Annandale ready for **INSPECTION TODAY** and **MOVE IN NOW** for one of our extensive range of designs.



Why buy a second hand home? Purchase a **BRAND NEW** home ready to move in today with air conditioning, pergola and paving, BBQ and Jarra outdoor setting, worth thousands of dollars for **FREE!**

Complete Home/Land Packages at The Avenues, Kirwan from only...

## \$163,600

Call now for more information regarding this outstanding offer!

Display Centres Open Sat to Wed 11:30pm



PHONE 4773 1000  
Parkside Shopping Centre, Bernard Lane, Kirwan

BERNARD ST

WILLOWBUSH SHOPPING CENTRE

KIRWAN

PHONE 4773 7852

BERNARD ST

ANNANDALE DRIVE

ANNANDALE

PHONE 4728 2821

**TROPICAL LIVING AT ITS BEST!**


Annexure B

Tropical Homes Advertisement – 31 July 1999

10 Homes to Inspect Today

# Investors take note!

Investment properties with a 100% rental guarantee...




**"An unbelievable investment offer"**

- No Management Fees for 3 Years
- Guaranteed 6.5% Return for 3 Years
- 100% Rental Guarantee for 3 Years
- Choice of 10 homes to choose from
- Purchase from only \$20 per week \*

10 homes to choose from in The Avenues, Kirwan and Annandale, ready for INSPECTION TODAY and with quality tenants ready to MOVE IN NOW.

With prices predicted to rise by up to 15% with the introduction of the GST, don't wait any longer. Take advantage of Tropical's Hassle Free Investment Offer today.

Investment packages start from \$163,600.



PHONE 4773 1000  
Parkside Shopping Centre, Bamford Lane, Kirwan  
Tropical Homes (Townsville) Pty Ltd. License No. 002492

Call now for more information regarding investment offer.

Display Centres Open: Sat to Wed 1-5pm

BUNICA ST

WILLOWS SHOPPING CENTRE

KERN DROS DR

HERVEY FALL RD

ANNANDALE DRIVE

CYPRESS DRIVE

KIRWAN  
PH: 4773 7852

ANNANDALE  
PH: 4728 2841

\*Conditions apply

TROPICAL LIVING AT ITS BEST!

## Annexure C

### Corrective Advertisement

#### **CORRECTIVE ADVERTISING**

## **An apology from Tropical Homes**



In the Townsville Bulletin in late July, we ran two advertisements about the effects of the GST on the price of new homes and land. The claim behind each advertisement was that the prices of new homes and land were likely to rise up to 15% under the GST.

The Australian Competition and Consumer Commission has raised concerns that the advertisements are likely to mislead consumers. Their reason is that, while the true effect of the GST is not yet known, it's likely there will actually be a rise of less than 10%.

Tropical Homes would like to apologise if any of our advertising has misled you, or any consumer, about the effect of the GST on new home and land prices.

As a result of the ACCC's concerns, we have agreed not to repeat these claims and to place this public apology. We will also implement a trade practices compliance program to ensure our advertising won't mislead consumers in the future.



This corrective advertisement has been placed by Tropical Homes as part of undertakings provided to the Australian Competition and Consumer Commission (ACCC) in relation to possible contraventions of the Trade Practices Act. It has been paid for by Tropical Homes.

## Annexure D

### Trade Practices Compliance Program

The Trade Practices Compliance Program ("the Program") to be undertaken by Tropical Homes will be implemented as follows:

#### General

- 1) Within two (2) months of the undertaking coming into effect, Tropical Homes will develop for consideration by the Commission, a trade practices compliance program ("the Draft Program").
- 2) Tropical Homes will make whatever changes to the Draft Program that the Commission may reasonably require.
- 3) Once the Commission has approved the Program, Tropical Homes will, within one (1) month of receipt of the Commission's approval, implement the Program at its own expense.
- 4) Tropical Homes will place responsibility for the implementation and effectiveness of the Program with its General Manager.
- 5) Tropical Homes will appoint a senior officer as the Trade Practices Compliance Officer ("the Compliance Officer"). The Compliance Officer will be appointed at the time the Program is implemented.

#### Advertising Reviews

- 6) Tropical Homes will require the Compliance Officer to review all advertising ("Advertising Review") of Tropical Homes (by any medium) to ensure that it complies with the *Trade Practices Act 1974*, prior to its publication or broadcast. Without limiting the scope of the Advertising Review, it will address:
  - i) Whether representations contained in the advertisements are able to be substantiated;
  - ii) Whether representations contained in the advertisements are likely to mislead or deceive consumers;
  - iii) Whether representation as to future matter, is made on reasonable grounds; and
  - iv) Whether the representations made in the advertisement require qualification, and if so, whether the advertisement provides the information necessary to qualify the representation. Such qualification should be of a size and prominence to effectively qualify any representation.
- 7) Tropical Homes will require the Compliance Officer to maintain a documentary record of the Advertising Reviews. Such documentary record will include:



- i) a description of the advertisement;
  - ii) a description of the publication (including name, date, page(s) and publisher);
  - iii) a copy of the advertisement;
  - iv) written advice that the advertisement had been reviewed and cleared by the Compliance Officer (including the date on which the advertisement was reviewed); and
  - v) written advice of any possible contraventions of the Trade Practices Act that were identified by the Compliance Officer and the action taken to address these possible contraventions.
- 8) Tropical Homes will ensure that the documentary records of the Compliance Reviews are available to the Australian Competition and Consumer Commission ("the Commission") to be reviewed from time to time. Such records are to be available from one week after the date of publication of the advertisement for a period of 3 years after that date. Such records shall be provided to the Commission within 5 working days of a written request for those records.

### **Complaints Handling**

- 9) Tropical Homes will ensure that the Program incorporates an appropriate complaints handling mechanism.

### **Education**

- 10) Tropical Homes will develop and implement an education program calculated to have the relevant staff, conversant with the provisions of the Act to a level where:
- i) General staff can avoid obvious contraventions and can identify more complex trade practices problems for referral to the Compliance Officer;
  - ii) the Compliance Officer can carry out their responsibilities; and
  - iii) the Compliance Officer can address more complex trade practices issues or, if not legally qualified or able to give the relevant advice, identify issues which require referral to Tropical Home's legal adviser.
- 11) The term "relevant staff" referred to above and below includes, but is not limited to, the General Manager, staff involved in the development, creation, input or approval of advertising or promotional material for Tropical Homes and staff involved in contact with customers or possible customers of Tropical Homes.
- 12) Tropical Homes will ensure that training sessions on the Trade Practices Act be given to relevant staff of Tropical Homes on two occasions within the twelve months after the implementation of the Program. The first of these training sessions is to be completed within 3 months of the Program being implemented and the remaining one between 8 and 9 months later.

**Review**

- 13) Tropical Homes will ensure that an independent external auditor, with expertise in trade practices law, conducts an audit (“the Audit”) of the program with a view to improving its effectiveness. The Audit will be conducted between 11 and 12 months after the implementation of the Program. The Audit will identify deficiencies and make recommendations as to possible improvements to the Program.

**Reporting**

- 14) Tropical Homes will provide the Commission with the following:
- i) Within 10 working days of the implementation of the Program, a copy of the Program;
  - ii) Within 10 working days of the implementation of the Program, notice of the appointment of the Compliance Officer including name, position and contact details;
  - iii) Within 10 working days after each of the training sessions, notice of completion of that seminar including an outline of the session, details of the presenter(s) and details of attendees; and
  - iv) Within 10 working days of the completion of the Audit, a copy of the Audit together with advice as to what changes Tropical Homes intends to incorporate in the Program as a result of the Audit.
- 15) Tropical Homes will make changes to the Program as reasonably requested by the Commission having considered the documentation referred to at paragraph 14(iv) above. Such changes are to be implemented within 2 weeks of the Commission’s request.

**Duration**

- 16) The Program will remain in effect for three years following the undertaking coming into effect.