

TRADE PRACTICES ACT 1974

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

by

Tyco Australia Pty Ltd
ACN 008 399 004

Background

1. TYCO AUSTRALIA PTY LTD ACN 008 399 004 (Tyco) carries on business in Queensland. Tyco's business includes conducting inspections, testing and maintenance of fire alarm systems, fire sprinkler systems, fire hoses and hydrants and portable fire extinguishers ("the services").

2. Between August 1990 and September 1998, Tyco entered into contracts with other parties, including building owners and managers, to perform the services. Each contract obliged Tyco to carry out the services specified in accordance with Australian Standard AS 1851 or in accordance with the Fire Protection Industry Association of Australia Limited ("FPIAA") Specification of Inspections Testing and Maintenance as applicable. AS 1851 and the FPIAA Specification required:
 - (a) in the case of fire sprinkler systems and fire hydrant systems, weekly, quarterly and annual inspection and testing; and
 - (b) in the case of fire alarm systems, monthly and annual inspection and testing.

3. Between August 1990 and September 1998, Tyco:
 - (a) had insufficient personnel to enable it to carry out all of the periodic services it was required to perform under all of its contracts or proposed contracts;

- (b) had inadequate scheduling systems to ensure that all the periodic services were scheduled to be performed;
- (c) failed to perform services in accordance with the contracts; and
- (d) had inadequate systems to verify that services had been performed in accordance with the contracts.

4. Following an investigation, the Australian Competition & Consumer Commission (ACCC) considers that Tyco contravened the Trade Practices Act 1974 (the Act) in that Tyco:

- (a) made false or misleading representations in contravention of sections 52 and 53(aa) by:
 - (i) representing to customers that it would perform the services in accordance with AS1851 or the FPIAA Specification without having reasonable grounds for making that representation;
 - (ii) falsely representing that the services to be supplied under the contract were of a standard or grade to comply with AS 1851 or the FPIAA Specification; and
 - (iii) 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
 - (iv) invoicing customers in arrears for services knowing that the services had not been or may not have been performed as contracted.

and

- (b) accepted payment for services without intending or being capable of

supplying them in contravention of section 58 of the Act by:

- (i) invoicing customers in advance for services for which it should have had reasonable grounds to believe it would be unable to supply in accordance with the contracts;

- 5. In August 1998 the ACCC brought to Tyco's attention its view that the conduct referred to in paragraph 4 above contravened sections 52, 53(aa) and 58 of the Act. The ACCC and Tyco subsequently met several times to discuss the ACCC's opinion and Tyco made former and current employees available for interview by the ACCC.
- 6. Tyco admits that the conduct referred to in paragraph 4 contravened the Act and states that it has now ceased the conduct.

Undertakings

- 7. Tyco makes the following undertakings for the purposes of section 87B of the Act:

7.1 Negative Undertakings

Tyco will not, in trade or commerce:

- (a) represent to customers that it will perform services in accordance with AS1851 or the FPLAA Specification without having reasonable grounds for making that representation;
- (b) invoice customers for services if it has not or knows it would be unable to supply those services in accordance with the contracts

7.2 Compensation

Tyco will:

- (a) cause a review to be undertaken 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 31 December 1998;
- (b) write to all customers identified in that review as having not received service in accordance with the contracts and offer compensation to them in terms of the draft letters at annexure AA to this undertaking;
- (c) by 20 December 1999 place two advertisements in the Courier-Mail newspaper in the form of annexure BB to this undertaking, or such other form as may be approved by the ACCC, the advertisement to be:
 - (i) at least 1/4 page in size;
 - (ii) in no smaller than 14 point type;
 - (iii) published on one weekend and on a weekday within the first 6 pages of the newspaper on an odd numbered page; and
- (d) provide compensation if a customer identifies instances of services not supplied in accordance with a contract for the period before 1 January 1996, and is able to provide documentary evidence of them, whether by logbooks or other means.

7.2.1 The terms of the compensation will be as follows:

- (a) Fire Alarm Servicing
 - (i) For small contracts (annual value of \$700 or less), the annual testing component is valued at 30% and the monthly testing at 70% of the total contract value;

- (ii) For medium-sized contracts (annual value of more than \$700 but less than \$1200), the annual testing component is valued at 40% and the monthly testing at 60% of the total contract value;
- (iii) For large contracts (annual value of more than \$1200), the annual testing component is valued at 50% and the monthly testing at 50% of the total contract value;
- (iv) Annual services incorporate a normal monthly test and supplementary testing. Where the monthly service, but not the annual service, has been performed, the value of the monthly service will be deducted from the compensation amount for the unperformed annual test.

(b) Fire Sprinkler and Fire Hydrant Servicing

- (i) The weekly testing component is valued at 80% of the annual contract value, or 1.53% of the annual contract value per test;
- (ii) The quarterly testing component is valued at 10% of the annual contract value or 2.5% of the annual contract value per test;
- (iii) The annual testing component is valued at 10% of the annual contract value.

7.3 Internal review

Tyco will conduct an internal review to:

- (a) identify the causes of the contraventions of the Act identified at paragraph 4;
- (b) report on the remedial action undertaken to avoid a repetition of the contraventions;

and will complete and provide a copy of the report to the ACCC within 6 months of the date of the Orders of the Federal Court in this matter.

7.4 Auditing

Tyco will conduct internal spot auditing of its operations responsible for the services. Audit reports will be completed annually for the years 1999, 2000 and 2001 and will be signed off by Tyco's managing director. Copies of the reports will be provided to the ACCC as soon as practicable after completion.

7.5 Compliance program upgrade

Tyco has commissioned and will continue with an upgrade of its trade practices compliance program complying with AS 3806 and incorporating the following:

(a) Aim

To create a culture of compliance within Tyco and to prevent, so far as is reasonably possible, any contraventions of the Act by Tyco or by its directors, employees or agents.

(b) Policy

The formal reaffirmation by Tyco of a policy of strict compliance with both the letter and spirit of the Act and the reaffirmation and enforcement of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act.

(c) Compliance infrastructure

Tyco will appoint an appropriately qualified senior staff member as the compliance officer with overall responsibility for trade practices

compliance.

(d) Coverage

The compliance program will cover all directors, employees and agents of Tyco whose duties could result in their being concerned in conduct that might breach the Act.

(e) Education

An education program will be developed and implemented, designed 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 potential trade practices problems for referral to the appropriate person in the Tyco compliance infrastructure;
- (ii) persons with responsibilities within the Tyco compliance infrastructure can effectively carry out those responsibilities; and
- (iii) the Tyco 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 its solicitors.

(f) Revisions

Tyco will make whatever changes to the draft program that the ACCC may reasonably require and will then prepare and submit to the ACCC a trade practices compliance program which shall be a document comprising the draft program incorporating those changes.

(g) Implementation

Tyco will implement the trade practices compliance program within three months of the ACCC advising of the changes referred to in subparagraph (f). The program will remain in force, subject to the requirements of subparagraph (h) for a minimum period of five years from the signing of this undertaking.

(h) Review

At the end of each 12 month period following the acceptance of this undertaking, until the third anniversary of that acceptance, Tyco will cause an independent auditor (who shall be an independent accountant or solicitor approved by the ACCC) to review and report on:

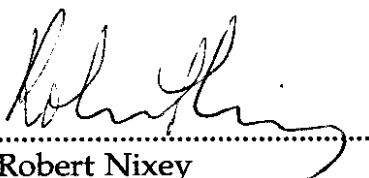
- (i) the implementation of the trade practices compliance program and the achievement of its objectives over the preceding 12 months; and
- (ii) any recommended changes to the trade practices compliance program that may be necessary to ensure achievement of its objectives.

Tyco will cause the independent auditor to complete the review and provide a copy of his or her report to Tyco and to the ACCC within 14 days of the end of each 12 month period. Tyco will incorporate into the trade practices compliance program, and implement as part of that program, all reasonable changes to it that are recommended by the independent auditor's report and are also approved by the ACCC in writing.

Acknowledgments

8. Tyco acknowledges that the ACCC will make this undertaking available for public inspection.
9. Tyco further acknowledges that the ACCC will from time to time publicly refer to this undertaking.
10. Tyco further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

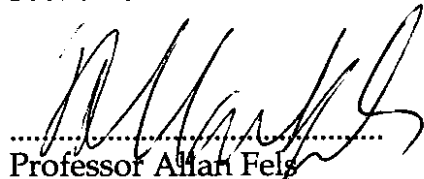
IN WITNESS of these undertakings and this agreement:



Robert Nixey
General Counsel
who warrants he is authorised to sign
for and on behalf of
Tyco Australia Pty Ltd

This 3rd day of December 1999

ACCEPTED by the Australian Competition and Consumer Commission pursuant to Section 87B of the Trade Practices Act 1974.



Professor Allan Fels
Chairman

This 3rd day of December 1999

Annexure "AA"

[TYCO LETTERHEAD]

Name of Customer
Address

Dear

**FIRE SERVICE MAINTENANCE AT [ADDRESS]
REFERENCE NUMBER: 123-456-789**

In a recent review of our records, it has come to our attention that some fire service maintenance services we are required to perform under our contract with you were not carried out, or were not performed to the standard you required. The details of those services are as follows:

Fire Alarm System

Date	Service	Value
dd.mm.yy	Monthly	\$00.00
dd.mm.yy	Annual	\$00.00

Fire Sprinklers and Hydrants

Date	Service	Value
dd.mm.yy	Weekly	\$00.00
dd.mm.yy	Quarterly	\$00.00
dd.mm.yy	Annual	\$00.00

The total value of the unperformed services is therefore \$00.00. **[For existing customers]:** Accordingly, you will not be charged for the next xx services (i.e. until dd.mm.yy) or, if you prefer, you may claim this amount as a refund by cheque or goods to this value from the enclosed catalogue. **[For former customers]:** Accordingly, you are entitled to a refund of this amount or, if you prefer, goods to this value from the enclosed catalogue. If you believe there are any other services we may have missed, please contact us with the details and we will assess the appropriate compensation. We will, of course, need you to substantiate any additional claims. This offer remains open for six months from the date of this letter and your acceptance of it releases us from any further liability to you for non-performance of the services concerned.

Needless to say, we sincerely regret that these service failures occurred. We acknowledge the role of the Australian Competition and Consumer Commission in bringing this matter to our attention and we assure you of our continuing resolve to ensure that our valued customers receive the service to which they are entitled. To arrange your compensation package, please call us toll-free on 1-800-555-555 quoting the reference number above. We will also be happy to answer any questions you may have.

Yours faithfully

ACCC ANNOUNCEMENT

**Remember paying for
all those inspections
and tests on your fire
protection systems?**

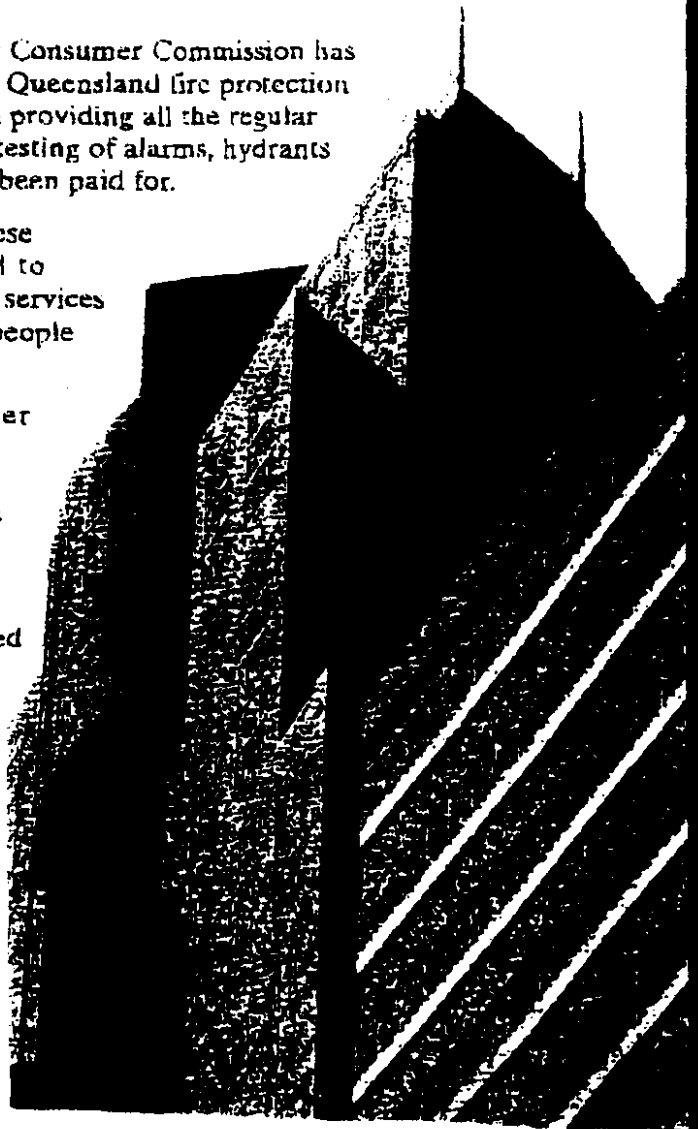
There's a possibility they were never done.

The Australian Competition and Consumer Commission has found irregularities among some Queensland fire protection companies. Some have not been providing all the regular inspections or maintenance and testing of alarms, hydrants and sprinkler systems they have been paid for.

We have made approaches to these companies and they have agreed to either refund money paid for services not provided or offer credits to people affected by their conduct.

But how can you know whether or not you have received 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 your fire protection company. If they don't give you a satisfactory response or if you want more information, contact the ACCC on 3835 4666.



Australian Competition & Consumer Commission