

TRADE PRACTICES ACT 1974
UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE *TRADE PRACTICES ACT 1974*
(CTH)

BY

CHUBB SECURITY HOLDINGS AUSTRALIA LIMITED (ABN 13 003 590 921)

AND

CHUBB SECURITY AUSTRALIA PTY LIMITED (ABN 99 003 605 098)

December 2004

1 PERSON GIVING UNDERTAKING

- 1.1 This undertaking is given to the Australian Competition and Consumer Commission (“**ACCC**”) by Chubb Security Holdings Australia Limited (ABN 13 003 590 921) and Chubb Security Australia Pty Limited (ABN 99 003 605 098), both of Level 1, 149-155 Milton Street, Ashfield NSW (collectively, “**Chubb**”), pursuant to section 87B of the *Trade Practices Act 1974 (Cth)* (“**Act**”).

2 BACKGROUND

- 2.1 Chubb provides a range of security services, including security patrolling and response, cash logistics, fire protection and suppression, security personnel, electronic security and monitoring, and installation and monitoring of home alarms, in every capital city and throughout regional and country Australia.
- 2.2 The ACCC has investigated certain aspects of Chubb’s conduct, including the conduct of Chubb’s mobile security patrol services business (“**CMS Business**”), which investigation gave rise to the proceedings by the ACCC against Chubb Security Australia Pty Limited in the Federal Court of Australia, No. N.901/2004 (“**Proceedings**”).
- 2.3 In the Proceedings, Chubb was charged with breaches of sections 58(b) and 75AZL of the Act for accepting payment or consideration for mobile security patrol services where there were reasonable grounds for Chubb believing that it would not be able to supply the contracted services during the period specified in the contract. Chubb pleaded guilty to the charges and the Proceedings were heard on 15 October 2004.
- 2.4 The ACCC acknowledges that Chubb has taken extensive remedial steps to address the issues in the Proceedings, including providing rebates to customers, making changes in CMS management and undertaking a review of the CMS Business (“**CMS Business Review**”), which review led to the introduction of an electronic verification of service delivery system and the buy-back program of franchises.
- 2.5 The ACCC has also investigated an allegation of a Chubb employee in Chubb’s alarm installation business attempting to enter into a market sharing arrangement with a competitor.

- 2.6 The ACCC acknowledges that Chubb has co-operated fully with the ACCC in its investigations and has reviewed existing company procedures and business structures. The ACCC is however concerned that Chubb's conduct, the subject of the Proceedings and its investigations, evidences a failure by Chubb to instil and maintain a culture of compliance by Chubb and its employees with their obligations under the Act.
- 2.7 To address any remaining concerns of the ACCC, Chubb has agreed to give the following undertaking under section 87B of the Act.

3 COMMENCEMENT OF UNDERTAKING

- 3.1 This undertaking comes into effect when:
- (a) the undertaking is executed by Chubb; and
 - (b) the undertaking, so executed, is accepted by the ACCC,
- ("Commencement Date").

4 TERM OF UNDERTAKING

- 4.1 This undertaking will be binding on Chubb for a term of three years from the Commencement Date unless withdrawn in accordance with section 87B(2) of the Act ("Term").

5 UNDERTAKING

Compliance and reporting structure

- 5.1 Chubb undertakes to:
- (a) within one month of the Commencement Date, confirm the appointment of a senior officer responsible for trade practices compliance matters ("**Senior Compliance Officer**") reporting directly to the General Counsel. The Senior Compliance Officer will have responsibility for providing reports on trade practices compliance matters to Chubb's Senior Management Team;
 - (b) ensure that compliance with the Act is discussed at least every three months at Chubb Senior Management Team meetings;
 - (c) hold, at least every three months, compliance committee meetings and establish clear reporting lines for compliance officers which are outside their business unit;
 - (d) develop within three months of the Commencement Date, and if already developed maintain for the Term, a disciplinary policy or code for those employees who do not comply with Chubb's trade practices compliance program ("**Compliance Program**") and/or the Act; and
 - (e) for the Term, maintain its programs which enable employees to confidentially notify Chubb management of potential business practice issues, including trade practices issues, within the organisation.

Company procedures

5.2 Chubb undertakes to:

- (a) within six months of the Commencement Date (and to the extent not already covered by these undertakings), review existing company procedures and introduce any additional or revised procedures reasonably required to address trade practices compliance issues, which may include procedures regarding the consideration of trade practices issues in relation to new business activity and proposed conduct;
- (b) within three months of the Commencement Date, include a statement of compliance in all new employment contracts to the effect that breaches of the Act will not be tolerated by Chubb and that serious breaches of the Act and wilful misconduct may result in summary dismissal; and
- (c) within six months of the Commencement Date, take steps to link performance appraisals and incentives to areas of trade practices compliance, including compliance audit results, as well as financial performance.

Mobile Services

5.3 Chubb undertakes to:

- (a) during the Term, maintain the new procedures of Chubb Mobile Services (“CMS”) for auditing mobile patrol runs and implement any changes identified by CMS as reasonably being required to those procedures to assist in identifying any trade practices compliance issues;
- (b) within twelve months of the Commencement Date, take all reasonable steps to implement changes required to address any trade practices compliance issues arising from the CMS Business Review;
- (c) within twelve months of the Commencement Date, implement changes to its systems for monitoring attendance at client sites to address any shortcomings identified as part of the CMS Business Review, primarily the introduction of the electronic verification of service delivery systems used for monitoring mobile patrol attendances, and maintain such changes during the Term; and
- (d) during the Term, offer rebates/credits to CMS customers where Chubb identifies, as a result of audits undertaken pursuant to the audit procedures referred to in paragraph 5.3(a), that services have not been provided to CMS customers.

Advertising/promotion

5.4 Chubb undertakes to:

- (a) within six months of the Commencement Date, review its existing processes for approval by Chubb of advertising by Chubb or Chubb’s dealers; and
- (b) within twelve months of the Commencement Date, implement any changes required to improve Chubb’s compliance with the Act in relation to such advertising. This may include introducing a protocol whereby all advertisements will be reviewed by a Chubb compliance officer or lawyer.

Code of conduct

- 5.5 Chubb undertakes to, within twelve months of the Commencement Date:
- (a) develop a voluntary code of conduct for the mobile patrols industry;
 - (b) provide a copy to all recognised security industry associations, including Australian Security Industry Association Limited (“**ASIAL**”); and
 - (c) recommend its adoption by these associations.

Compliance Program

- 5.6 Chubb undertakes to, within six months from confirming the appointment of the Senior Compliance Officer:
- (a) review its Compliance Program and take steps required to ensure that the Compliance Program:
 - (i) is consistent with Australian Standard AS3806;
 - (ii) will be implemented across Chubb; and
 - (iii) will be maintained for the Term;
 - (b) take all reasonable steps to ensure that the Board of Directors of Chubb, the Chubb Senior Management Team and all employees of Chubb are aware of Chubb’s Compliance Program and that it will be implemented across Chubb;
 - (c) as part of the Compliance Program, introduce annual trade practices compliance training for relevant employees and officers, which training will include examples of breaches of section 45 and relate to all other areas of the Act relevant to Chubb’s businesses (including Parts IV and V of the Act) (“**Trade Practices Training**”); and
 - (d) implement a system that provides for Trade Practices Training to be included as part of new relevant Chubb employee and officer inductions programs, which training will be provided within three months of the commencement of their employment.
- 5.7 Chubb undertakes, within three months of the Commencement Date, to inform all relevant employees and officers of Chubb that officers and employees are prohibited by law from engaging in market sharing conduct in breach of section 45 of the Act and to provide a relevant example of such conduct.

Compliance audit

- 5.8 Chubb undertakes to:
- (a) arrange for a critical review and audit of its Trade Practices Training, including its effectiveness in securing compliance with the Act, to be undertaken annually, at its own expense, by an independent compliance practitioner with adequate expertise in the Act;

- (b) provide to the ACCC a copy of the executive summary of any final report received by Chubb arising from each audit pursuant to paragraph 5.8(a) within two months of receiving the report; and
 - (c) implement all reasonable recommendations made by the independent compliance practitioner as set out in the final report referred to in paragraph 5.8(b).
- 5.9 The compliance practitioner referred to in paragraph 5.8 will qualify as independent on the basis that he or she:
 - (a) is not a present or past staff member or director of Chubb;
 - (b) has not acted or does not act for Chubb;
 - (c) is not retained by Chubb in any other capacity, either currently or in the past; and
 - (d) has no substantial shareholding or other interests in Chubb.

Complaint handling

- 5.10 Chubb undertakes to:
 - (a) review its complaint handling procedures, within six months of the Commencement Date; and
 - (b) ensure that its complaints handling procedures are consistent with Australian Standard 4269-1995.

Cooperation with the ACCC

- 5.11 Chubb will provide reasonable assistance to the ACCC in relation to any new trade practices issues notified by the ACCC to Chubb.

6 EFFECT OF UNDERTAKING

- 6.1 Chubb and the ACCC agree as follows:
 - (a) this undertaking is intended to replace all undertakings provided by Chubb to the ACCC and in force immediately prior to the Commencement Date ("**Previous Undertakings**");
 - (b) by executing this undertaking, Chubb withdraws all Previous Undertakings; and
 - (c) by accepting this undertaking, the ACCC consents to the withdrawal by Chubb of all Previous Undertakings.
- 6.2 Chubb and the ACCC agree that where any of the steps required under this undertaking have been commenced or completed by Chubb as at the Commencement Date ("**Relevant Steps**"), this undertaking does not require the Relevant Steps to be commenced or completed again. Accordingly, failure by Chubb to commence the Relevant Steps already commenced, or to complete the Relevant Steps already completed, is not a breach of this undertaking.

7 VARIATION OR REVIEW OF THIS UNDERTAKING

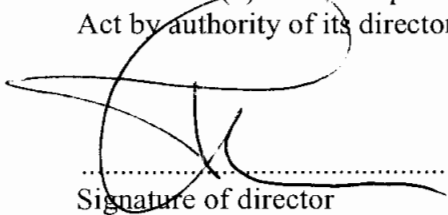
- 7.1 If Chubb is unable to comply with its obligations in this undertaking, or believes it is necessary to seek some modification of the undertaking due to changed circumstances, Chubb and the ACCC agree that they will review this undertaking and negotiate in good faith a variation or revocation of this undertaking pursuant to section 87B(2) of the Act.

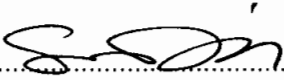
8 ACKNOWLEDGEMENTS

- 8.1 Chubb acknowledges that the ACCC will make this undertaking available for public inspection, will place it on the public register, and from time to time publish and publicly refer to this undertaking at its discretion.
- 8.2 Chubb acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct the subject of this undertaking.

EXECUTION PAGE

EXECUTED by CHUBB)
SECURITY HOLDINGS)
AUSTRALIA LIMITED (ABN 13)
003 590 921) in accordance with)
section 127(1) of the Corporations)
Act by authority of its directors:)

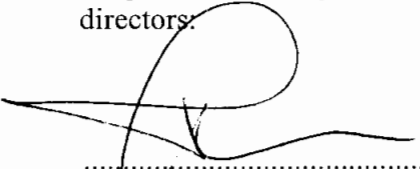

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Signature of director)

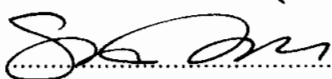

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Signature of ~~director~~/company)
secretary)

ANTONY CHAMBERLAIN
.....
Name of director (block letters)

Sarah DAVID
.....
Name of ~~director~~/company secretary)
(block letters)

EXECUTED by CHUBB)
SECURITY AUSTRALIA PTY)
LIMITED (ABN 99 003 605 098) in)
accordance with section 127(1) of the)
Corporations Act by authority of its)
directors:)

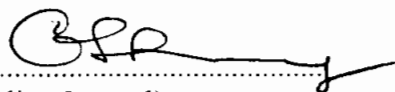

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Signature of director)


.....
Signature of ~~director~~/company)
secretary)

ANTONY CHAMBERLAIN
.....
Name of director (block letters)

SARAH DAVID
.....
Name of ~~director~~/company secretary)
(block letters)

ACCEPTED by the AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION pursuant to section 87B of the *Trade Practices Act 1974*


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(Graeme Julian Samuel)
Chairman
Australian Competition and Consumer Commission

Date: 22⁵ December 2004