



## THE TRADE PRACTICES ACT 1974

### Undertaking to the Australian Competition and Consumer Commission for the purposes of Section 87B of the Trade Practices Act 1974

by

**Tyco Australia Pty Limited trading as ADT Security**

**ACN 008 399 004**

#### Background

- 1 Tyco Australia Pty Limited, trading as ADT Security (ADT), provides various security services to residential and commercial customers, including remote alarm monitoring and related services. Sales of such services to residential and smaller commercial customers are made using a combination of direct sales and through independent third party dealerships authorised by ADT (**the Authorised Dealers**). Where a sale is made by an Authorised Dealer for the monitoring of a customer's alarm system, the Authorised Dealer enters into a Customer Service Agreement with the customer and then assigns that Customer Service Agreement to ADT.
- 2 Up until 30 September 2002 the security services provided by ADT to customers included:
  - 2.1 Installation and service of security systems;
  - 2.2 24 hour back to base alarm monitoring services;
  - 2.3 Alarm Response Services (where a patrol attends a customer's premises in response to an alarm);
  - 2.4 Scheduled Patrol Services (regular security inspections of a customer's premises); and
  - 2.5 Temporary Patrol Services (temporary or short term patrols of a customer's premises).
- 3 On 30 September 2002, ADT sold its security patrols business to Group 4 Securitas Pty Ltd. The security services that ADT currently provides to customers are primarily:
  - 3.1 Installation and service of security systems;
  - 3.2 24 hour back to base alarm monitoring services; and
  - 3.3 Alarm Response services (where a patrol attends a customer's premises in response to an alarm being triggered).

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## Concerns raised by the ACCC and ADT's response

- 4 In a letter to ADT dated 23 January 2004, the Australian Competition & Consumer Commission (**the ACCC**) expressed concern that:
- 4.1 during the period 1998 to 2002, ADT engaged in misleading and deceptive conduct in contravention of section 52 of the Trade Practices Act 1974 (**TPA**) by representing that scheduled patrol services had been provided by charging customers as if the services had been provided (**Patrol Issue**); and
- 4.2 during the period 1998 to 2004, ADT falsely represented to Authorised Dealers and customers, in contravention of section 53(aa) of the TPA, that the monitoring services it provided were of a particular standard, quality, value or grade, namely that customers would receive 'Grade One/A1' monitoring services when the monitoring services provided to customers were not certified as Grade One/A1 (**Monitoring Issue**).

### Patrol Issue

- 5 In a response to the ACCC's initial enquiry, ADT undertook a detailed review and reconciliation of its billing with respect to a representative sample of Victorian patrol customers in the 12 months prior to its selling of the patrol business on 30 September 2002. Subsequently ADT conducted a detailed review in relation to all states and territories where it had conducted patrol businesses.
- 6 This review identified instances where the number of patrols provided to a patrol customer fell short of the total number required. For example, where 4 patrols of a customer's premises were scheduled in a night sometimes one patrol was missed. Commonly such a missed patrol was the result of the patrol unit concerned being involved in an alarm response call out and being unable to complete all its scheduled patrols or have a backup unit conduct that patrol.
- 7 While ADT identified many instances where credits were issued to customers, ADT also identified a number of instances where customer credits were not correctly processed and therefore a patrol customer was in effect invoiced for a patrol that had not been provided. Out of a total of 1,392 patrol customers nationally this affected 339 former customers in Victoria, New South Wales and Western Australia. The total refunds identified by ADT, as due to former customers for missed patrols nationally, is \$27,638.57. The average refund amount owed per customer is \$81.52.
- 8 ADT regularly provided credits and refunds to its customers and did not intentionally fail to refund patrol customers. However, ADT acknowledges that, due to a failure of its processes for crediting customers, it did not provide credits or refunds to all patrol customers for patrol services that were not provided.

### Monitoring Issue

- 9 ADT formerly provided materials to its Authorised Dealers and customers that contained representations that it provided certified 'grade one' monitoring services to its customers. Some materials provided by ADT to its Authorised Dealers that represented that ADT customers would receive 'grade one' monitoring were current until at least mid 2003. However, from August 2001, ADT had commenced

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transitioning its customers' monitoring from its former certified Grade One/A1 monitoring facilities in Artarmon in New South Wales, Burwood in Victoria, and Perth in Western Australia to its new monitoring facility located at Rydalmere, New South Wales (the **Rydalmere facility**) which was ungraded.

- 10 The Rydalmere facility currently consists of a secure bunker on the lower ground floor and a call centre located upon the second floor. The lower ground floor facility contains the alarm detection and data recording computer systems and was certified on 28 April 2003 by the Australian Security Industry Association Limited (ASIAL) as Grade One/A1 in accordance with Australian Standard (AS) 2201.2-2001. The second floor call centre is a secure facility requiring positive identification for entry and itself being under 24 hour CCTV surveillance. However, as this facility has exterior windows and is not housed in a reinforced 'bunker', the call centre does not, and was not intended to, meet the requirements for Grade One/A1 certification under AS 2201.2-2001.
- 11 All alarm calls terminate in ADT's lower ground floor facility. This facility houses the computers that answer the alarm call, downloads the information from the customer's base station, creates a record of all such alarm events and then communicates the necessary information to linked customer care (call centre) operators. The call centre on level 2 is not a stand alone monitoring facility and cannot operate without being connected to the lower ground floor A1 graded monitoring facility. However if at anytime, the call centre located upon the second floor became inoperative for any reason, the lower ground facility can function independently and all calls that are not handled from the call centre within the Rydalmere lower ground floor facility are automatically transferred to ADT's Auckland, New Zealand monitoring facility.
- 12 ADT currently has 3,162 commercial customers whose monitoring contracts specify that, for insurance purposes, that they be monitored from a Grade One/A1 facility. These customers alarms are all actioned solely from within the Rydalmere lower ground floor graded facility. However all other ADT customers are monitored from the graded lower ground floor facility in conjunction with the ungraded second floor call centre. While all its customers benefit from the data and systems security of the lower ground floor facility, ADT acknowledges that monitoring services which involve the call centre function being located outside the graded facility is not provision of certified graded monitoring services.
- 13 ADT no longer promotes the monitoring services it offers to residential and small business customers as being graded in accordance with AS 2201.2-2001, although it continues to provide this service at the customer's request. ADT however acknowledges that prior published material, including some training material provided to Authorised Dealers that was current up to July 2003, made the claim of providing graded monitoring services without this qualification. Further, ADT acknowledges that these materials were not corrected at the time of its commencing monitoring from the Rydalmere facility or at any later date.
- 14 In response to the ACCC's concerns ADT hereby offers the following undertakings for the purposes of section 87B of the TPA.

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## Commencement of Undertakings

- 15 These undertakings will come into effect when:
- 15.1 The undertakings are executed by ADT; and
  - 15.2 The undertakings so executed are accepted by the ACCC.

## Undertakings

### Monitoring Issue

- 16 ADT will not, for a period of 3 years from the date of this undertaking, represent to prospective customers that, if they enter into an agreement to receive alarm monitoring services from ADT that they will receive a Grade One/A1 monitoring service, unless ADT will provide a full certified Grade A1 monitoring service to that customer.
- 17 Within 2 weeks from the date of acceptance of the undertaking, ADT will confirm to all of its Authorised Dealers that, unless specifically requested by the customer, the monitoring services provided by ADT are not provided solely from Grade One/A1 monitoring facilities. This communication will provide details of the Rydalmere monitoring facility and the reasons why that monitoring services using the second floor call centre do not meet the A1 grading certification requirements.
- 18 Within 8 weeks from the date of acceptance of the undertaking, ADT will write to all customers who currently receive an alarm monitoring service utilising the ungraded second floor Rydalmere call centre in conjunction with the graded lower ground floor Rydalmere facility. This letter will inform customers that they are not receiving monitoring services solely from a certified Grade One/A1 facility and state that the second floor Rydalmere call centre is not graded. A copy of the letter to be sent to customers is at **Annexure A**. ADT will offer each of these customers:
- 18.1 An appropriate apology if they had understood otherwise; and
  - 18.2 A dedicated toll free customer enquiry line to respond to any customer queries or concerns.
- 19 ADT will offer compensation to those customers who respond to the dedicated toll free customer enquiry line with information that indicates they were misled as to the type of monitoring service they were to receive at the time of purchase. This compensation will consist of an offer to be monitored solely from the certified Grade One/A1 facility and a free home safety kit containing a fire blanket and a first aid kit, or such greater offer of compensation as ADT, in its discretion, considers fair and appropriate given the circumstances of the claim.

### Patrol Call Issue

- 20 Within 2 weeks from the date of acceptance of the undertaking, ADT will write to each affected former scheduled patrol call customer apologising for the failure to previously provide a refund for any missed patrols, and providing the applicable refund to the customer. A copy of the letter to be sent to former customers is at **Annexure B**.

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## Reporting undertaking

- 21 ADT will provide the following reports to the ACCC by 1 September 2005:
- 21.1 In relation to the monitoring issue, a report which outlines:
    - 21.1.1 the number of ADT customers sent the letter at Annexure A;
    - 21.1.2 the number of customers who responded to the letter at Annexure A by contacting ADT via the dedicated toll free customer enquiry line or by other means; and
    - 21.1.3 For each customer who responded to the letter at Annexure A:
      - (a) details of compensation provided by ADT to the customer; or
      - (b) if compensation was not provided by ADT to the customer, the reason/s compensation was not provided by ADT to that customer.
  - 21.2 In relation to the patrol call issue, a report which outlines:
    - 21.2.1 the number of former ADT customers sent the letter at Annexure B; and
    - 21.2.2 the total amount of refunds provided by ADT to the former customers.

## Application of Undertakings

- 22 The application of these undertakings is limited to ADT's security business only and does not apply in any way to other business operations within Tyco Australia Pty Limited, its parent company, subsidiaries or other related bodies corporate of Tyco Australia Pty Limited.

## Acknowledgements

- 23 ADT acknowledges that the ACCC may make this undertaking available for public inspection.
- 24 ADT acknowledges that the ACCC may from time to time publicly refer to this undertaking.
- 25 ADT acknowledges that this undertaking in no way derogates from the rights and remedies of any person arising from the alleged conduct.

IN WITNESS of these undertakings and its agreement the common seal of Tyco Australia Pty Limited trading as ADT Security was affixed, witnessed by the following persons:



A handwritten signature in black ink, appearing to be 'Karl Robert Davies'.

.....  
Signature of authorised person

.....  
**Karl Robert Davies**  
Office held **Finance Director**

.....  
Name of authorised person (print)

A handwritten signature in black ink, appearing to be 'Ian Stanley Milne'.

.....  
Signature of authorised person

**Ian Stanley Milne**  
Managing Director

.....  
Office held

.....  
Name of authorised person (print)

**Accepted by the Australian Competition and Consumer Commission** pursuant to section 87B of the Trade Practices Act 1974

A handwritten signature in black ink, appearing to be 'Graeme Samuel'.

.....  
Graeme Samuel  
Chairman

This 27 day of May 2005

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## **ANNEXURE A**

<b>ADT LETTER TO ALARM MONITORING CUSTOMERS</b>
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**[ADT Letterhead]**

... May 2005

Customer name  
ADDRESS

Dear [Customer Name]

### **Important Notice to Alarm Monitoring Customers**

The Australian Competition and Consumer Commission (ACCC) has raised with ADT that many of its residential and small business customers may have contracted for monitoring services in the belief that they would receive a certified Grade One/A1 monitoring service. These customers were told by ADT representatives that they would receive a Grade One/A1 monitoring service and/or received contracts and promotional material that, for example, stated:

*'State of the Art monitoring from our grade one facilities, 24 hours a day, 7 days a week.'*

However, since August 2001, when ADT began transferring its customers' monitoring to its new facility located in Rydalmere in New South Wales, most customers have not received a certified Grade One/A1 monitoring service.

The Rydalmere facility consists of a certified Grade One/A1 facility on the lower ground floor (first certified in April 2003) and an ungraded call centre located on the second floor of the same building. All ADT customer alarm signals are received and electronically monitored from the certified Grade One/A1 facility at Rydalmere. However most customers, including you, have the associated call centre function performed from the ungraded second floor call centre.

The ungraded second floor call centre at Rydalmere is a secure facility requiring positive identification for entry and is under 24 hour CCTV surveillance. However, as this facility has exterior windows and is not housed in a reinforced 'bunker', the call centre does not, and was not intended to, meet the security requirements for Grade One/A1 certification.

While ADT believes that all customers monitored from its Rydalmere facility receive a similar level of service from both the certified Grade One/A1 facility and the ungraded call centre, ADT sincerely apologises if you understood that you would be monitored solely from a certified Grade One/A1 monitoring facility.

If you believe you were misled about receiving a Grade One/A1 monitoring service, please provide details by contacting our Free call Customer Support Line on XXXXX who will advise you of remedies that may be available.

Thank you for being a valued ADT customer and please be assured that ADT will continue to strive to improve the level of service we deliver to our customers.

Yours sincerely

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**ANNEXURE B**

ADT LETTER TO FORMER PATROL CALL CUSTOMERS
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Customer name  
Address  
Address

Dear [Customer Name],

Following a review of our customer patrols records, it has been brought to our attention that your premises was scheduled to receive [number] patrol visits each month. Having audited our system records, we note that some patrol visits were not completed in the period to September 30<sup>th</sup> 2002.

The reasons that some patrol visits were missed vary, but includes our contracted patrol operator having been engaged in an alarm response at another monitored premises and therefore being unable to complete the patrol circuit.

We sincerely apologise for this oversight and enclose a refund in the amount of \$..... in respect of this omission. This refund is calculated on the basis of the contracted charge for each patrol visit that was missed.

Once again, we apologise for this oversight. Should you require anything further please do not hesitate to contact ADT on [telephone number].

Sincerely