



## **TRADE PRACTICES ACT 1974**

### **UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN FOR THE PURPOSE OF SECTION 87B**

**BY**

**DRAGON WHOLESALING PTY LIMITED  
ACN 051 556 748**

#### **PERSONS GIVING THIS UNDERTAKING**

1. These undertakings are given to the Australian Competition and Consumer Commission (ACCC) by:
  - a) Dragon Wholesaling Pty Limited, ACN 051 556 748 (Dragon) of 21B Victoria Avenue, Castle Hill, New South Wales 2154.

Under section 87B of the *Trade Practices Act 1974* (TPA).

#### **BACKGROUND**

2. The Australian/New Zealand Standard, AS/NZS 4013 (the Standard), is used to regulate the maximum particle emission rates in most States and Territories within Australia of woodheaters. This Standard specifies a maximum allowable particle emissions of 4g per kilogram of wood burnt, under controlled test conditions. The Standard also stipulates that models tested must comply with (a) design drawings submitted by the manufacturer and (b) specified labelling requirements.
3. However, there are doubts that the emissions performance of woodheaters available for retail purchase actually comply with the Standard, as testing for certification purposes is conducted on a prototype model rather than a mass-produced model. To address this issue, woodheaters are routinely audited in many states in the US but, until recently, audits have not been conducted in Australia.
4. Regarding the testing of woodheaters for compliance with the Standard, the particle emissions performance of retail models, however, may not be the same as certification results because (a) woodheater models sold may differ from models tested in the laboratory and (b) woodheaters may have been modified, for example, to achieve longer burn times.
5. In recognising the need to better characterise woodheater emissions from models actually sold to the public, a National Woodheater Audit Program, was implemented by the Australian Home Heating Association (AHHA), on behalf of the Australian Government and participating States.

6. Results from the National Woodheater Audit Program demonstrated that the degree of non-compliance, in terms of emissions performance, engineering design specifications and labelling requirements, was significant and needed to be addressed by industry. The importance of these results has been recognised by governments, the AHHA and individual manufacturers, through the development of an action plan.

7. The action plan is set out in detail at: -

<http://www.deh.gov.au/atmosphere/airquality/publications/pubs/action-plan.pdf>

8. The action plan, which addresses the key findings of the National Woodheater Audit Program, is a joint initiative of the Australian, NSW, Victorian, South Australian, Western Australian and Tasmanian governments, and the AHHA.

9. These undertakings by Dragon also address the key findings of the National Woodheater Audit Program.

### **SPECIFICS**

10. Dragon is incorporated in New South Wales and its principal activity is as a supplier of wood heaters.

11. Dragon voluntarily participated in the National Woodheater Audit Program, and a Woodheater model distributed by Dragon was tested by AHHA Testing Laboratory and found not to comply with the Standard in the following respects:

- (a) Labelling - Statement of compliance refers to superseded standard
- (b) Design specifications - Minimum air-flow setting was lower than indicated in design drawings.

12. The ACCC advised Dragon that in failing to comply with the Standard the ACCC was concerned that Dragon may have:

- a) Engaged in misleading conduct and contravened section 52 of the TPA;
- b) Falsely represented that its goods were of a particular standard, quality, value or grade and contravened section 53(a) of the TPA; and
- c) Falsely represented that its goods or services have performance characteristics they do not and contravened section 53(c) of the TPA.

### **UNDERTAKINGS**

13. In consequence of the matters referred to above, Dragon has cooperated with the ACCC to resolve the ACCC's concerns and has offered undertakings pursuant to section 87B of the TPA.

## **Undertakings offered by Dragon**

14. In consequence of the matters referred to above Dragon undertakes to the ACCC that Dragon, by itself, its servants and agents:
  - (a) For a period of three years from the date of execution of this Undertaking, will ensure that all woodheaters supplied by it will comply with the Standard.
  
15. Dragon will, at its own expense:
  - (a) Within three months of the acceptance by the ACCC of this undertaking, use its best endeavours to design, implement and make provision to maintain and audit a trade practices compliance program (Compliance Program) which is appropriate to the size and nature of Dragon's business, and relates to those provisions of the TPA which are relevant to the conduct of Dragon's business, including sections 52, 53(a) and 53(c). The Compliance Program shall be maintained for a period of not less than three years;
  - (b) prior to the implementation of the Compliance Program, ensure the Compliance Program is approved by a suitably qualified compliance professional (Compliance Professional) with expertise in trade practices law who is independent of Dragon and has no conflict of interest in providing this service to Dragon;
  - (c) retain the Compliance Professional to provide the ACCC with a report confirming that the Compliance Program has been implemented and is in accordance with this Undertaking. This report will be provided to the ACCC within four months of the date of this Undertaking coming into effect;
  - (d) cause a review of the Compliance Program to be undertaken by the Compliance Professional annually from the date of this Undertaking for a period of three years. The Compliance Professional shall conduct the reviews and report to the ACCC within 30 days of each annual review to confirm that the review has been conducted.

## **COMMENCEMENT OF UNDERTAKING**

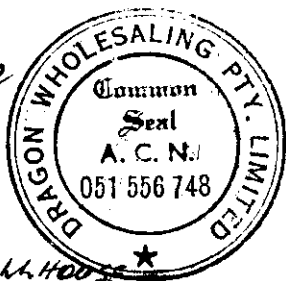
16. These Undertakings come into effect when:
  - (i) These undertakings are executed by Dragon; and
  - (ii) The ACCC accepts the undertakings so executed.

**ACKNOWLEDGMENTS**

- 17. Dragon acknowledges that the ACCC will make this Undertaking available for public inspection.
- 18. Dragon further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.
- 19. Dragon acknowledges and accepts that these undertakings in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- 20. Dragon further acknowledges the reports referred to in this Undertaking and the Trade Practices Compliance Program as in force from time to time may be held with this Undertaking on the Public Register.

**IN WITNESS** of this Undertaking and its agreement the common seal of Dragon Wholesaling Pty Limited, ACN 051 556 748 was hereunto affixed by the authority of the Board of Directors in the presence of:

*[Signature]*  
Director/Secretary



*[Signature]* J.P.  
Director

*BARBARA JOY MILLHOUSE*  
Name (printed)

*KENNETH IAN MILLHOUSE*  
Name (printed)

This.....*17<sup>th</sup>*.....day of *JUNE*.....2005

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

Chairperson *[Signature]*

This.....*28*.....day of *June*.....2005