

TRADE PRACTICES ACT 1974

SECTION 87B

UNDERTAKING GIVEN BY ENERGY AUSTRALIA

PERSON GIVING UNDERTAKING

- 1. This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") under Section 87B of the *Trade Practices Act 1974* ("the Act") by EnergyAustralia a New South Wales State-Owned corporation established under the *State-Owned Corporations Act 1989* (NSW).

BACKGROUND

- 2. The Commission has received complaints from Mr Ronald Mizen of 1 Roslyn Avenue, Islington, New South Wales, that electricity supplied by EnergyAustralia to his home and that of his neighbours has been defective.
- 3. In the Commission's view, EnergyAustralia made representations to Mr Mizen that were misleading or deceptive, or likely to mislead or deceive as to the availability of rights and remedies under the Act for the supply of electricity which may have breached the conditions and warranties implied by the Act. In the Commission's view, these representations were in breach of sections 52 and 53(g) of the Act.
- 4. Further, in the Commission's view, EnergyAustralia may have made representations to EnergyAustralia's consumers generally, in breach of sections 52 and 53(g) of the Act, concerning the availability of rights and remedies under the Act for the supply of electricity which may breach the conditions and warranties implied by the Act.
- 5. On 27 July 1998, the Commission wrote to EnergyAustralia raising:
 - 5.1 its concerns in relation to the representations made by EnergyAustralia to Mr Mizen and his neighbours; and
 - 5.2 its concerns as to representations being made by EnergyAustralia to consumers generally in relation to the rights and remedies available to consumers in the event of defective electricity supplied by EnergyAustralia (collectively the "Commission's concerns").

6. In response to the Commission's concerns, EnergyAustralia has agreed to provide the undertakings in the terms set out below and the Commission has agreed to accept the undertakings under section 87B of the Act.

ACKNOWLEDGMENTS

7. The Commission acknowledges that:
 - 7.1 Energy Australia has attempted to resolve Mr Mizen's concerns;
 - 7.2 EnergyAustralia has co-operated with the Commission and has taken its concerns seriously; and
 - 7.3 these undertakings address the Commission's concerns.

UNDERTAKINGS

Definitions

"Commencement Date" means the date this undertaking is executed by the Commission.

"Consumer" means an EnergyAustralia customer who satisfies the definition of "consumer" in section 4B of the Act.

"Day" means a day other than a Saturday, Sunday or public holiday.

"Defect" means the supply of electricity by EnergyAustralia which was not of merchantable quality within the meaning of the terms in sections 71 and 66 of the Act. "Defective" has the corresponding meaning.

Commencement of undertaking

8. These undertakings come into effect when the Commission accepts the undertakings executed by EnergyAustralia. On the Commencement Date, EnergyAustralia will assume the obligations set out below.

OBLIGATIONS

Increase customer awareness

9. Energy Australia will:
 - 9.1 during December 1998, write to each of its customers:
 - (a) describing EnergyAustralia's Guaranteed Customer Service Standards;
 - (b) describing the role of the Energy Industry Ombudsman in respect of quality of supply and other issues; and
 - (c) referring to the rights of Consumers to make claims pursuant to the Trade Practices Act in relation to the quality of electricity supply,
 - 9.2 during December 1998, make available to all customers a document or documents explaining the characteristics of the electricity supply, and describing ways available to customers to mitigate the effects of variations in the supply; and
 - 9.3 provide the documents referred to in undertakings 9.1 and 9.2 to the Commission, for the Commission's comments on ways in which the documents may possibly be misunderstood by consumers and ways in which they might be made clearer.
10. The notifications and documents referred to in undertaking 9 will also be available on EnergyAustralia's internet site, at EnergyAustralia's customer service centres and to customers generally upon request.

Review of past consumer claims

11. The day after the Commencement Date, EnergyAustralia will commence a review of all claims for compensation made by consumers arising out of defects in the electricity supplied to them on or after 1 March 1996.
12. The review referred to in undertaking 11 will be conducted in accordance with procedures established with reference to Australian Standard 4269-1995 (Complaints Handling) and the review criterion set out in undertaking 16 below.
13. EnergyAustralia will send a letter to each of its customers, notifying them that:
 - 13.1 former EnergyAustralia policies may have resulted in the improper rejection of claims by consumers arising from defects in the electricity supplied to them;

- 13.2 where EnergyAustralia has previously rejected consumer claims relating to electricity supply defects and the claims date after 1 March 1996 it will routinely review the claim without any further action required on the part of the complainant;
- 13.3 some consumers who have made complaints arising from defects in the electricity supplied to them may have been misinformed about their legal rights and as a result, may have refrained from making a formal claim for compensation;
- 13.4 as a result of the possibility referred to in 13.3, EnergyAustralia will now consider new claims made by consumers in relation to electricity supply defects dating after 1 March 1996, if the consumer notifies EnergyAustralia of the claim by completing and returning the claim form enclosed with the letter.

Review procedures

14. Each claim reviewed pursuant to undertakings 11 and 13 will be assigned to a designated EnergyAustralia officer for investigation and management.
15. A dedicated telephone enquiry line will be established to enable customers to contact the review officer assigned to their claim and request information about the progress of the review.

Criterion for determination

16. Provided that consumers have suffered loss or damage arising from defects in electricity quality (supplied between 1 March 1996 and the Commencement Date), all past claims for compensation reviewed, and all new claims submitted in connection with these undertakings, will be allowed except where EnergyAustralia can demonstrate that the claim arose from a defect in the electricity supply arising within the consumer's installation at the time the incident occurred.

Notifying consumers of the determination

17. As each past claim is reviewed and determined, and each new claim is determined, EnergyAustralia will notify the claimant in writing whether it has been accepted or rejected.

Claims disallowed will be independently reviewed

18. Where EnergyAustralia has rejected the claim, it will notify the claimant that:
 - 18.1 the determination will be referred for independent review by the New South Wales Energy Industry Ombudsman or a member of a panel appointed by LEADR (whichever the claimant prefers);

- 18.2 the claimant may choose between the two independent review bodies by completing and returning to EnergyAustralia the form enclosed with the letter of rejection;
- 18.3 in the event that EnergyAustralia has not received the form referred to in 18.2 within a month of the date it sent the letter of rejection, the matter will be referred to LEADR for review.

Offers of compensation

19. Where EnergyAustralia accepts the claim and has already been provided with evidence on which to base an offer of compensation, it will offer a sum of money in compensation when it notifies the consumer that the claim has been allowed.
20. Where EnergyAustralia:
 - 20.1 accepts the claim but does not have evidence on which to base an offer of compensation, it will request evidence in the form of copies of receipts (where available) or a statutory declaration where other evidence of loss, damage or expenditure is not available;
 - 20.2 requests evidence related to a claim for compensation, it will explain the reason for the request and enclose a form for a statutory declaration, together with advice on how to complete it.

Criteria for compensation

21. Where compensation is offered following EnergyAustralia's review of consumer claims, it will be assessed on the following bases:
 - 21.1 where electrical equipment has been replaced, the replacement value of the equipment;
 - 21.2 where electrical equipment has been repaired, the repair cost;
 - 21.3 where damage to non-electrical goods has occurred as a result of a defect in the electricity supply, the replacement or repair cost of those goods; and
 - 21.4 where electronically stored information has been lost, an ex gratia payment will be offered.

Dispute relating to compensation

22. EnergyAustralia will:

22.1 automatically refer to LEADR for determination any dispute which arises concerning the amount of compensation to which any consumer is entitled in connection with claims reviewed pursuant to these undertakings; and

22.2 notify the claimant as soon as the dispute has been referred to LEADR.

Independent review of consumer claims

23. As soon as possible after the Commencement Date, EnergyAustralia will engage LEADR at EnergyAustralia's expense to appoint a panel of suitably qualified mediators who will hear and determine all consumer claims which are to be referred for independent determination in accordance with the procedures set out in these undertakings. All independent reviews will be at no cost to the consumer, regardless of the outcome.

24. The panel members referred to in undertaking 23 will be appointed without reference to EnergyAustralia and will make their determinations independently of EnergyAustralia.

Reports to the Commission

25. EnergyAustralia will report to the Commission on the progress of its reviews of past claims within 6 months of the Commencement Date or immediately after settlement of the last claim, whichever is the earlier.

Review of complaints handling process

26. Within one (1) month of the Commencement Date, EnergyAustralia will review and revise its consumer complaints handling and dispute resolution procedures by reference to Australian Standard 4269-1995 (Complaints Handling). The purpose of the review will be to ensure that all consumer complaints received by EnergyAustralia whether in writing, in person or by telephone, are recorded and dealt with in an appropriate and timely manner.

27. Within three (3) months of the Commencement Date, EnergyAustralia will produce and make available through EnergyAustralia customer service centres, the EnergyAustralia internet site and to its consumers generally upon request, a publication setting out in plain English, EnergyAustralia's consumer complaints handling and dispute resolution procedures.

Review of trade practices and compliance program

28. The day after the Commencement Date, EnergyAustralia will commence a review of its trade practices compliance program by reference to Australian Standard 3806-1998 (Compliance Programs). In summary, the review shall consider whether EnergyAustralia's existing trade practices compliance program contains measures sufficient to:
 - 28.1 analyse and respond to the trade practices matters that resulted in this undertaking;
 - 28.2 identify risk areas for trade practices breaches such as representations in written communications, policy documents, EnergyAustralia's internet site and by customer service personnel, and develop procedures and options to minimise any risks;
 - 28.3 demonstrate the commitment of EnergyAustralia to compliance and appoint a suitably qualified compliance officer at senior management level;
 - 28.4 provide practical and effective training for relevant staff and management on identified risk areas so that breaches and possible breaches may be prevented where possible, and otherwise be detected, referred and acted on;
 - 28.5 develop compliance information services including a suitably designed trade practices compliance manual;
 - 28.6 ensure reporting and rectification of breaches and possible breaches of the Act, consistent with clear lines of responsibility and authority;
 - 28.7 state explicitly that EnergyAustralia will take action internally against those responsible for breaches of the Act; and
 - 28.8 improve recordkeeping.
29. Within 12 months of the Commencement Date, EnergyAustralia will prepare a comprehensive explanation of its Trade Practices compliance program and will submit it, together with all documents supporting the compliance program, to an independent auditor who will assess whether the compliance program contains measures sufficient to meet the objectives set out in undertaking 28.
30. Within one month of receiving the independent auditor's report, EnergyAustralia will submit to the Commission a copy of its Trade Practices compliance program and a copy of the auditor's report.
31. Within 2 months of EnergyAustralia receiving the independent auditor's report, EnergyAustralia will implement revisions to its Trade Practices compliance program recommended by the auditor and will submit a copy of the final program to the Commission.

32. Within 2 years of the Commencement Date, EnergyAustralia will conduct an internal audit of its Trade Practices compliance program and will submit a report on it to the Commission.
33. EnergyAustralia undertakes that its Trade Practices compliance program will relate to the Act generally.

Generally

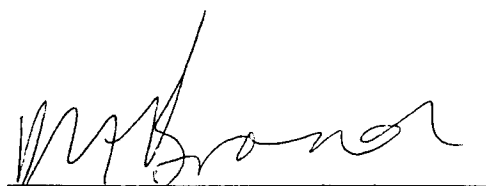
34. EnergyAustralia will appoint an appropriate officer to oversee the implementation and execution of these undertakings.

FURTHER ACKNOWLEDGMENTS

35. EnergyAustralia acknowledges that the undertaking will be placed on the Commission's public register.
36. EnergyAustralia acknowledges that the Commission may from time to time refer publicly to these undertakings and the concerns underlying them.
37. EnergyAustralia acknowledges that these undertakings in no way derogate from the rights and remedies available to any third parties.

EXECUTED on *9 December* 1998

THE COMMON SEAL of ENERGYAUSTRALIA is affixed in accordance with its Articles of Association in the presence of:




Director



Director/Secretary

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION



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Chairperson

Date: *Dec 10* 1998