

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN UNDER SECTION 87B

BY

METRICON HOMES PTY LTD ACN 005 108 752

PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (the Commission) by METRICON HOMES PTY LTD ACN 005 108 752 c/- Arthur Andersen, Level 17, 360 Elizabeth Street, Melbourne VIC 3000 under section 87B of the *Trade Practices Act 1974* (the Act).

BACKGROUND

1. Metricon Homes Pty Ltd (Metricon) is incorporated in Victoria.
2. In the State of Victoria Metricon principally conducts a house construction business.
3. During September of 1999 the Commission received a number of complaints from prospective Metricon customers about representations made by representatives of Metricon concerning the effect of the Goods and Services Tax (GST) on building costs.
4. The Commission was alerted to a number of increases to prices of building work from October 1999 to July 2000, which would take into account the introduction of the GST. Complainants further alleged they were informed by Metricon representatives that the increase for GST purposes would apply even where the construction of the dwelling was to be completed by 1 July 2000.
5. Commission staff attended the Metricon offices at Ormond, Victoria on 5 October 1999. At that time, a Metricon representative made the following representations to the Commission employee:
 - house prices will be increasing by 4% on 18 October 1999, another 4% by mid-December 1999 and possibly a further increase in April 2000. The Commission officer was then informed that the increases were due to the GST;
 - Metricon contracts are already factoring in the impact of the GST into the price a buyer pays.
 - it made no difference if the house was built and full payment was finalised prior to 1 July 2000 as prices are already factoring in gradually the anticipated price rises due to the GST.
 - The Commission officer asked the Metricon representative whether the price rises (detailed in bullet point 1 above) represented the extent of any price increases to come. The Metricon representative stated that there may be further increases, but these would be based on any increasing tradesmen costs .

6. The Commission wrote to Metricon on 7 October 1999 and alerted the company to the Commission's concern that Metricon or Metricon's directors, employees or agents were making misleading or deceptive representations about the effect of the GST on the cost of house construction. The Commission considered that these representations were in breach of sections 52 and 53(e) of the Act.
7. The Commission provided details to Metricon of the Commission's investigations into the representations made by Metricon by letter dated 26 October 1999.
8. By facsimile on 5 November 1999, Mr Roger Jepson of Mills Oakley Lawyers responded to the Commission's concerns on behalf of Metricon. Metricon agreed to immediately cease the alleged unlawful conduct. Metricon offered the Commission undertakings in accordance with section 87B of the Act.

COMMENCEMENT OF UNDERTAKING

1. This undertaking comes into effect when:
 - (i) the undertaking is executed by Metricon; and
 - (ii) the Commission accepts the undertaking so executed.

UNDERTAKINGS

Metricon gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*:-

1. Metricon, its employees, agents or representatives will immediately cease and desist from any misleading or deceptive representations about the effect of the GST on building costs.
2. Within three (3) months of the commencement of this undertaking taking effect, develop for consideration by the Commission, a trade practices compliance program. Once the Commission has approved the program, Metricon will within one (1) month of receipt of such approval, implement the program at its own expense.

The program will incorporate the following features:

(a) Aim:

The program will aim to:

- create a culture of compliance within Metricon
- prevent so far as reasonably possible, any contravention of the Act by Metricon, its directors,

employees or agents; and

- include procedures and mechanisms to minimise the likelihood of further contraventions of the Act.

(b) Object:

The object of implementing the trade practices compliance program is to create and maintain compliance in accordance with the *Australian Standard on Compliance, AS-3806*.

(c) Policy:

Metricon will formally adopt, or re-affirm:

- a policy of strict compliance with both the letter and spirit of the Act; and
- adopt, re-affirm and enforce sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act.

(d) Compliance Infrastructure

Metricon will appoint an appropriately qualified named director as the Metricon Compliance Officer with overall responsibility for trade practices compliance.

The compliance program is to cover all directors, employees and agents (“relevant staff”) of Metricon whose duties could result in them being concerned in conduct that might breach the Act.

(e) Education

Metricon will develop and implement an education program calculated to have the relevant staff conversant with the provisions of the Act to a level where:

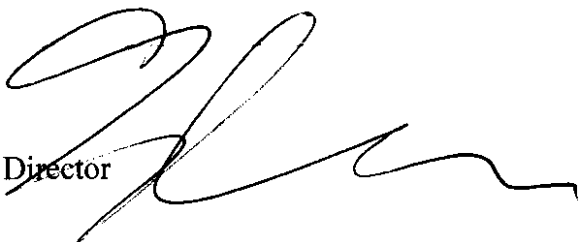

- general staff can avoid obvious contraventions and can identify more complex trade practices problems for referral to the most appropriate person in the Metricon compliance infrastructure;
- persons with responsibility within the Metricon compliance infrastructure can effectively carry out these responsibilities; and
- Metricon’s 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 Metricon’s solicitors.
- Metricon will make whatever changes to the draft compliance program that the Commission may reasonably require.
- Metricon will then implement the trade practices compliance program within one (1) month of the Commission advising of the changes it requires to the draft program and that the trade practices compliance program will remain in force for a minimum period of three (3) years from the commencement of this undertaking.

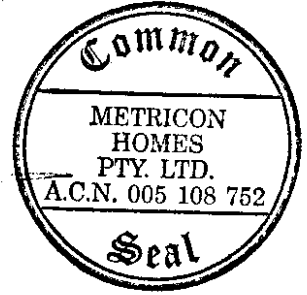
- At the end of each twelve month period following its implementation, until the third anniversary of the implementation of the Program, Metricon will submit the Program for review by an independent auditor. The results of these reviews are to be provided to the Commission within four weeks of their receipt by Metricon. Should the reviews identify weaknesses in the Program, Metricon will make suitable amendments to the Program. Metricon will also make any changes to its program that the Commission may reasonably require upon receipt of the review. Metricon will advise the Commission of these amendments within three weeks of receipt of a Commission direction seeking such amendments.

ACKNOWLEDGMENTS

1. Metricon acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission will, at its discretion, from time to time, publish and publicly refer to this undertaking.
2. Metricon acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from Metricon's conduct.


IN WITNESS of these undertakings and its agreement the common seal of Metricon Homes Pty Ltd ACN 005 108 752 was hereunto affixed by authority of the Board of Directors in the presence of

Director  Director/Secretary 



This 17th 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 22 December day of 1999