



ACT
Government

Justice and Community Safety

Fair Trading (Australian Consumer Law) Act 1992

Undertaking to the Commissioner for Fair Trading given for the purposes of section 218 of the Australian Consumer Law (ACT)

UNDERTAKING TO THE COMMISSIONER FOR FAIR TRADING

BY

ILEARP Pty Limited T/as Ultra Tune Belconnen

ACN 002 386 932

and

Seed Holdings Pty Limited T/as Ultra Tune Tuggeranong

ACN 104 674 455

PERSON GIVING UNDERTAKING

- 1) This undertaking is given to the Commissioner for Fair Trading by ILEARP Pty Limited T/as Ultra Tune Belconnen **ACN 002 386 932** and Seed Holdings Pty Limited T/as Ultra Tune Tuggeranong **ACN 104 674 455** for the purpose of section 218 of the Australian Consumer Law (ACT) (the ACL).

BACKGROUND

- 2) Mr Jeffery Linsell is the sole director of ILEARP Pty Limited and Seed Holdings Pty Limited. This undertaking is given by both companies jointly. They are collectively referred to as 'Ultra Tune' in this undertaking on the understanding that each of them is required to carry out the obligations relating to the business for which they are responsible.
- 3) Ultra Tune operates a motor vehicle repair business with premises trading as Ultra Tune Belconnen and Ultra Tune Tuggeranong.
- 4) The services provided include vehicle repairs and servicing. Ultra Tune has previously carried out vehicle inspections for registration purposes and previously operated two approved inspection stations in the ACT.
- 5) The approved inspection stations were the premises at which authorised examiners performed vehicle inspections for registration purposes. Those premises were approved under Division 6.3.3 of the *Road Transport (Vehicle Registration) Regulation 2000 (Vehicle Registration Regulation)*. Ultra Tune did not renew its authorisation for the two inspection stations. Effective from 25 August 2013 the Belconnen and Tuggeranong Ultra Tunes are no longer approved inspection stations.

- 6) Ultra Tune employs qualified mechanics, some of whom were also authorised examiners appointed under Division 6.3.2 of the Vehicle Registration Regulation to perform vehicle inspections for registration purposes in the ACT (**authorised examiners**).
- 7) If an authorised examiner inspects or tests a vehicle, the authorised examiner must issue a certificate of inspection for the vehicle certifying either that, the vehicle, its parts and equipment, comply with the applicable vehicle standards or that the vehicle, its parts or equipment, do not comply and stating the ways in which it does not comply (**certificates of inspection**).
- 8) The **applicable vehicle standards** are set out in Schedule 1 of the Vehicle Registration Regulation.
- 9) Schedule 1, section 1.136 of the Vehicle Registration Regulation set out the requirements for the performance of braking systems at the time Ultra Tune was conducting vehicle inspections for registration purposes.
- 10) During 2012, the Office of Regulatory Services (**ORS**) conducted routine audits of Certificates of Inspection to monitor compliance with regulatory requirements.
- 11) In November 2012 ORS audit officers conducted site visits at both the Belconnen and Tuggeranong premises of Ultra Tune. During these inspections auditors spoke to the two Authorised Examiners in relation to their brake testing practices.
- 12) During the period of December 2011 to October 2012 it is alleged that one of the authorised examiners failed to attach brake test slips to certificates of inspections on 50 occasions. In the absence of these slips there is no evidence that brake tests using a decelerometer, skid plate tester or roller tester had in fact been carried out on customers' vehicles. During the period September 2011 to June 2012 it is alleged that the second authorised examiner failed to carry out brake tests on 32 occasions.
- 13) By issuing certificates of inspection to consumers in circumstances where no mechanical brake tests were performed on consumers' vehicles using a decelerometer, skid plate tester or roller tester, Ultra Tune engaged in conduct that is likely to have contravened section 29(1)(b) of the ACL, namely by representing to consumers that their brakes were tested and complied with the applicable vehicle standards. In fact, no testing capable of determining whether the applicable vehicle standards were met, was undertaken.
- 14) Ultra Tune no longer operates the two approved inspection stations and no longer employs any authorised examiners at these approved inspection stations. The authorised examiners handed back their stamps.
- 15) To address the Commissioner for Fair Trading's concern Ultra Tune has offered the Commissioner for Fair Trading this undertaking in accordance with section 218 of the ACL.

B. [Signature], [Signature]

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COMMENCEMENT

16) This undertaking comes into effect when:

- a) the undertaking is executed by Ultra Tune; and
- b) the Commissioner accepts the undertaking so executed.

UNDERTAKINGS

17) Ultra Tune undertakes for the purpose of section 218 of the ACL that in the event that it becomes an approved examiner station at its premises at Belconnen or Tuggeranong and employs any authorised examiners; in the future:



- a) It will not in trade or commerce:
 - i. Make representations to consumers that their brakes have been tested and are compliant with section 1.132 of schedule 1 of the *Road Transport (Vehicle Registration) Regulation 2000* unless the brakes have been tested on a roller brake testing machine, a skid plate testing machine or a vehicle decelerometer in accordance with the prescribed requirements set out in Schedule 2 of the *Road Transport (Vehicle Registration) Regulation 2000*.
 - ii. Make representations to consumers that their vehicles are deemed compliant for ACT vehicle registration purposes unless Ultra Tune has conducted suitable testing to determine that the vehicles do, in fact, comply with the applicable vehicle standards.

18) Ultra Tune undertakes for the purpose of section 218 of the ACL that in the event that it becomes an approved examiner station at its premises at Belconnen or Tuggeranong and employs any authorised examiners in the future it will:

- a) Issue a statement to all staff, through Ultra Tune General Manager, which commits him and Ultra Tune to the improvements described below. The statement will, amongst other things:
 - i. Affirm Ultra Tune's commitment to compliance with the requirements of the Road Transport laws that apply to authorised examiners performing their duties and the ACL;
 - ii. Inform staff of the importance of their role in the creation and maintenance of a culture of compliance and reporting.

Ultra Tune will provide a copy of the statement to the ORS within 7 days once it is issued.

- b) Review and, where required, revise its job descriptions to reinforce that all managers are accountable for compliance in their areas of responsibility.
- c) Ensure that the following training is provided by a suitably qualified legal or compliance professional:

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- i. To the Store Managers and Authorised Examiners: Training within the next six months (or within six months of their appointment), and again at least once every two years, in:
 - A. Authorised premises equipment and its maintenance/calibration;
 - B. Procedure for conducting vehicle inspections, including brake testing;
 - C. Completion of Certificate of Inspection and associated record-keeping; and
 - D. Misleading and deceptive conduct, false representations and consumer guarantee provisions of the ACL
- d) Ultra Tune will provide to the ORS written confirmation of the attendance of the above employees at the initial training. Ultra Tune will within 2 weeks of completion of the training referred to in paragraph 18 (c) above, provide to the ORS a written statement or certificate from the suitably qualified legal or compliance professional who conducts the training verifying that such training has occurred.
- e) To the extent that it has not already done so, implement an internal audit program to ensure that brake tests using at least one of the machines referred to in clause 17(a)(i) of the Undertaking are carried out with every vehicle inspection and that brake test slips are attached to Ultra Tune's copy of the certificate of examination.

19) If Ultra Tune becomes an approved examiner station, it shall ensure that training is provided by a suitably qualified compliance or legal professional to all Ultra Tune staff, including management, in relation to the misleading and deceptive conduct, false representations and consumer guarantee provisions of the ACL within the next four months, and then at least once every year. Within 2 weeks of the first 2 training sessions occurring, Ultra Tune will provide written confirmation to the ORS that the training sessions have occurred.

20) Ultra Tune undertakes for the purpose of section 218 of the ACL to make a contribution to the Boundless Canberra Project in the sum of \$5,000.

DURATION

21) These undertakings have effect for a period of 2 years.

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ACKNOWLEDGEMENTS

22) Ultra Tune acknowledges that:

- a) the ORS will make this Undertaking publically available including by publishing it on the ORS website;
- b) the ORS will, from time to time, make public reference to the Undertaking including in ORS publications;
- c) the ORS will not issue a media release in relation to the undertaking; and
- d) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.


Executed by ILEARP Pty Limited T/as Ultra Tune Belconnen **ACN 002 386 932** and Seed Holdings Pty Limited T/as Ultra Tune Tuggeranong **ACN 104 674 455** in accordance with section 127 of the *Corporations Act 2001*:


.....
Mr Jeffery Linsell, Director


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Witness

DATED this 19 day of Sept 2014.

ACCEPTED by the ACT Commissioner for Fair Trading pursuant to section 218 of the Australian Consumer Law (ACT).


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Brett Phillips
ACT Commissioner for Fair Trading

DATED this 24 day of September 2014.