



ASSURANCE

Fair Trading Act 1987
Section 79

Assurance to the Commissioner for Consumer Affairs given for the purposes of s79 of the *Fair Trading Act 1987* by:

**Peter F Burns Real Estate Pty Ltd (ACN 007 647 136) T/A Peter F Burns Real Estate
and Michael James Burns**

PERSONS GIVING THIS ASSURANCE

1. This Assurance is given to the Commissioner for Consumer Affairs ("the Commissioner") by Peter F Burns Real Estate Pty Ltd trading as Peter F Burns Real Estate in the State of South Australia and Michael James Burns for the purposes of section 79 of the *Fair Trading Act 1987* (SA).

BACKGROUND

2. Peter F Burns Real Estate Pty Ltd (ACN 007 647 136) ("Peter F Burns Real Estate") is a proprietary company limited by shares.
3. Peter F Burns Real Estate is a licensed Real Estate Agent providing sales and rental services for commercial and residential properties in South Australia.
4. Mr Michael James Burns ("Mr Burns") was the sole director between 26 August 1992 and 5 October 2017 of Peter F Burns Real Estate.
5. Section 24A of the *Land and Business (Sale and Conveyancing) Act 1994* requires the advertised price of residential land to be not less than the prescribed minimum advertising price. The prescribed minimum advertising price is whichever is the greater of the vendor's acceptable selling price and the agent's estimate of the selling price, as expressed in the Sales Agency Agreement.
6. Section 20 of the *Land and Business (Sale and Conveyancing) Act 1994* requires a Sales Agency Agreement (entered into with a vendor before an agent can lawfully act on behalf of the vendor) to meet all requirements prescribed under section 20 of the *Land and Business (Sale and Conveyancing) Act 1994*.

CONDUCT OF CONCERN

7. Between 1 July and 30 September 2016, Peter F Burns Real Estate advertised the sale of a property at 3 Baker Street, Somerton Park, South Australia for between \$580,000-\$599,000 in circumstances where the vendor's acceptable selling price was \$590,000, and the agent's estimated selling price was \$580,000. The prescribed minimum advertising price was therefore \$590,000.
8. Between 1 October and 30 November 2016 Peter F Burns Real Estate acted as a land agent for a vendor in relation to the sale of residential land at 4 Bode Street, Henley Beach, South Australia in circumstances where the Sales Agency Agreement did not

record the agent's estimated selling price, the vendor's acceptable selling price, or the manner of sale.

CONTRAVENTIONS

9. The Commissioner considers and Peter F Burns Real Estate and Mr Burns acknowledge, that it is likely that Peter F Burns Real Estate has:
 - 9.1. Made a representation (through advertising) as to the likely selling price of residential land which was less than the prescribed minimum advertising price in contravention of section 24A of the *Land and Business (Sale and Conveyancing Act) 1994*; and
 - 9.2. Acted on behalf of a vendor in respect of the sale of residential land in circumstances where the Sales Agency Agreement did not comply with all the requirements under section 20(1) of the *Land and Business (Sale and Conveyancing Act) 1994* in contravention of section 20 of the *Land and Business (Sale and Conveyancing Act) 1994*.
10. The Commissioner considers and Mr Burns acknowledges, that as sole director, it is likely that Mr Burns has:
 - 10.1. Aided, abetted, counselled or procured Peter F Burns Real Estate to make a representation (through advertising) as to the likely selling price of residential land which was less than the prescribed minimum advertising price in contravention of section 24A of the *Land and Business (Sale and Conveyancing Act) 1994* and section 267 of the *Criminal Law Consolidation Act 1935*; and
 - 10.2. Aided, abetted, counselled or procured Peter F Burns Real Estate to act on behalf of a vendor in respect of the sale of residential land in circumstances where the Sales Agency Agreement did not comply with all the requirements under section 20(1) of the *Land and Business (Sale and Conveyancing Act) 1994* in contravention of section 20 of the *Land and Business (Sale and Conveyancing Act) 1994* and section 267 of the *Criminal Law Consolidation Act 1935*.

COMMENCEMENT OF ASSURANCE

11. This Assurance comes into effect when:
 - 11.1. The Assurance is executed by Peter F Burns Real Estate;
 - 11.2. The Assurance is executed by Mr Burns; and
 - 11.3. The Commissioner for Consumer Affairs accepts the Assurance so executed.

ASSURANCE BY PETER F BURNS REAL ESTATE AND MR BURNS FOR THE PURPOSES OF SECTION 79 OF THE FAIR TRADING ACT 1987

12. In response to the concerns raised by CBS on behalf of the Commissioner for Consumer Affairs, Peter F Burns Real Estate and Mr Burns hereby provide an Assurance to the Commissioner that:
 - 12.1. Peter F Burns Real Estate will not make a representation as to the likely selling price of property which is less than the prescribed minimum advertising price in compliance with section 24A of the *Land and Business (Sales and Conveyancing) Act 1994*;

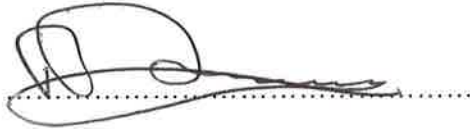
- 12.2. Peter F Burns Real Estate will not act for a vendor unless and until it has entered into a Sales Agency Agreement with the vendor that fulfils all the requirements for Sales Agency Agreements in compliance with section 20 of the *Land and Business (Sales and Conveyancing) Act 1994*;
- 12.3. Mr Burns will not aid, abet, counsel or procure a land agent to make a representation as to the likely selling price of property which is less than the prescribed minimum advertising price in compliance with section 24A of the *Land and Business (Sales and Conveyancing) Act 1994*;
- 12.4. Mr Burns will not aid, abet, counsel or procure a land agent to act for a vendor in circumstances where the land agent has not entered into a Sales Agency Agreement that fulfils all the requirements for Sales Agent Agreements in compliance with section 20 of the Act;
- 12.5. Peter F Burns Estate undertakes that existing and new staff are inducted and trained to identify legal and ethical requirements of Sales Agency Agreements and adhere to all legislative obligations; and
- 12.6. Peter F Burns Real Estate will ensure that its Sales Agency Agreement compliance process is maintained by a senior member of staff on an ongoing basis.

ACKNOWLEDGMENTS

13. Peter F Burns Real Estate and Mr Burns acknowledge that:

- 13.1. It is an offence to breach an Assurance, as set out in section 81 of the *Fair Trading Act 1987*.
- 13.2. CBS will make this Assurance publicly available including by publishing it on CBS' public register of undertakings on its website;
- 13.3. CBS may, from time to time, make public reference to the Assurance including in news media statements and in CBS publications; and
- 13.4. This Assurance in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- 13.5. This Assurance may be produced to any Court in respect of any proceedings alleging any future contraventions of the *Fair Trading Act 1987* or a related Act.

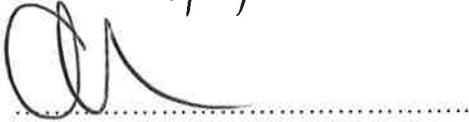
EXECUTED BY Peter F Burns Real Estate pursuant to section 127(1) of the *Corporations Act 2001 (Cth)*



Mr Peter Charles Burns

Director of Peter F Burns Real Estate Pty Ltd

Date: 19/4/18



Ms Alyce Marie Young

Director/Secretary of Peter F Burns Real Estate Pty Ltd

Date: 19/04/18



Mr Michael James Burns

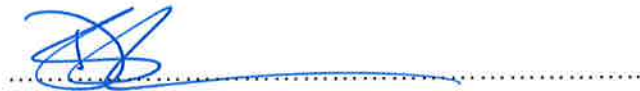
Date: 16-4-18

Signature of Witness



Witness name: Kylie Vowles

Accepted by the Commissioner for Consumer Affairs (SA) pursuant to s79 of the *Fair Trading Act 1987*



Commissioner for Consumer Affairs (SA)

Date: 2/5/18