



UNDERTAKING
Australian Consumer Law (SA)
Section 218

Undertaking to the Commissioner for Consumer Affairs given for the purposes of Section 218 of the *Australian Consumer Law (SA)* by:

Nicholas Daniel Cimesa (ABN 44 585 991 909) T/A PRM Fabrication Engineering

PERSONS GIVING THIS UNDERTAKING

1. This Undertaking is given to the Commissioner for Consumer Affairs by Nicholas Daniel Cimesa trading as PRM Fabrication Engineering, in the State of South Australia for the purposes of section 218 of the *Australian Consumer Law (SA)* ('the ACL'), which is adopted by the *Fair Trading Act 1987*.

BACKGROUND

2. Mr Nicholas Daniel Cimesa is a natural person and sole trader, ABN 44 585 991 909.
3. Mr Cimesa's business was the fabrication of car trailers.
4. Section 158(7) of the ACL requires a person engaged in trade or commerce, who accepts payment (including part payment) for goods or services, to deliver those goods or services within a reasonable time. It is an offence to accept payments for goods or services and to fail to deliver those goods or services within a reasonable time.

CONDUCT OF CONCERN

5. On 18 June 2014, Mr Cimesa entered into a verbal contract with Mr Laursen to build and supply a closed-floor trailer for \$3,975. On that day, Mr Cimesa stated he would complete the trailer in four to six weeks and accepted full payment for the provision of the trailer. In December 2014, Mr Cimesa stated he would complete the trailer by 15 January 2015. Mr Cimesa neither completed and delivered the trailer nor provided a refund to Mr Laursen.
6. On or about 23 June 2014, Mr Cimesa entered into a verbal contract with Mr Quinn to build and supply a car trailer for \$2,915. Mr Cimesa stated that he could provide the trailer by 20 July 2014. On 30 June 2014, Mr Cimesa accepted a \$900 deposit to complete the trailer. As the trailer was not completed by October 2014, Mr Quinn requested a return of his deposit. Mr Cimesa neither completed and delivered the trailer nor provided a refund to Mr Quinn.
7. On or about 17 July 2014, Mr Cimesa entered into a verbal contract with Mr Petagna to build and supply a trailer for \$3,210. On 25 July 2014, Mr Cimesa accepted a \$1,500 deposit from Mr Petagna. At this time, Mr Cimesa stated that the trailer would be completed in approximately six to eight weeks. On 4 December 2014, Mr Cimesa accepted an additional \$1,500 deposit from Mr Petagna. At this time, Mr Cimesa stated that the trailer would be completed by 31 December 2014. Mr Cimesa neither completed and delivered the trailer nor provided a refund to Mr Petagna.
8. By engaging in the conduct described in paragraphs 5 to 7 above, Mr Cimesa accepted payments (including part payments) for goods and services which he failed to deliver within a reasonable time.

CONTRAVENTIONS

9. As a result of the matters outlined above, the Commissioner considers, and Mr Cimesa acknowledges, that it is likely that Mr Cimesa has:

9.1. Accepted payments for goods or services and failed to provide those goods or services within a reasonable time, contrary to s 158(7) of the ACL.

COMMENCEMENT OF UNDERTAKING

10. This Undertaking comes into effect when:

10.1. the Undertaking is executed by Mr Cimesa; and

10.2. the Commissioner for Consumer Affairs accepts the Undertaking so executed.

UNDERTAKING BY MR CIMESA FOR THE PURPOSES OF SECTION 218 OF THE ACL

11. Mr Cimesa hereby provides an undertaking to the Commissioner that he will:

11.1. When acting in trade or commerce, not accept payment for goods or services and then fail to provide those goods or services within a reasonable time, contrary to s 158(7) of the ACL.

11.2. Compensate Mr Laursen \$3,957, Mr Quinn \$900 and Mr Petagna \$3,000 within 10 months from the date this Undertaking comes into effect.

ACKNOWLEDGEMENTS

12. Mr Cimesa acknowledges that:

12.1. the Commissioner may take action for a breach of an undertaking given under the ACL and seek orders from a court, including an order:

12.1.1. directing Mr Cimesa comply with the undertaking; or

12.1.2. directing Mr Cimesa to pay an amount up to any financial benefit that he has obtained directly or indirectly that is reasonably attributable to the breach; or

12.1.3. directing Mr Cimesa to compensate any other person who has suffered loss or damage as a result of the breach; or

12.1.4. the court considers appropriate.

12.2. CBS will make this undertaking publicly available including by publishing it on the CBS public register of Undertakings on its website;

12.3. CBS may, from time to time, make public reference to the undertaking including in news media statements and in CBS publications;

12.4. this undertaking in no way detracts from the rights and remedies available to any other person arising from the alleged conduct; and

12.5. this undertaking may be produced to any Court in respect of any proceedings alleging any future contraventions of the ACL.

EXECUTED BY Nicholas Daniel Cimesa



Nicholas Daniel Cimesa

Date: 8/8/18

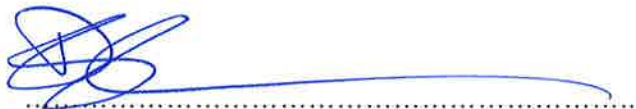


Signature of Witness

Name: STEPHEN GIBSON

Date: 8/8/18

Accepted by the Commissioner for Consumer Affairs (SA) pursuant to Section 218 of the *Australian Consumer Law (SA)*.



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Commissioner for Consumer Affairs (SA)

Date: 8/8/18