



**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:

**Lifestyle Mobility Pty Ltd (ACN 607 614 817)**

**PERSONS GIVING THIS UNDERTAKING**

1. This Undertaking is given to the Commissioner for Consumer Affairs (**Commissioner**) by Lifestyle Mobility Pty Ltd (**Lifestyle Mobility**) for the purposes of section 218 of the *Australian Consumer Law (SA)* (**ACL**), which is adopted by the *Fair Trading Act 1987 (SA)*.

**BACKGROUND**

2. Lifestyle Mobility is a proprietary company limited by shares.
3. Lifestyle Mobility is a retailer of mobility scooters.
4. Lifestyle Mobility provides consumers with a warranty against defects by offering a two year warranty on brand new mobility scooters, six month warranty on batteries and tyres and three month warranty on second hand scooters. The warranty document provided by Lifestyle Mobility is titled "Your Contract – Key Terms and Conditions" (**terms and conditions**).

**AUSTRALIAN CONSUMER LAW**

5. Sections 29(1)(m) and 151(1)(m) of the ACL provide, among other things, that a person must not, in trade or commerce, in connection with the supply or possibly supply of goods or services make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.
6. Sections 102 and 192(1) of the ACL provide, among other things, that a person must not, in connection with the supply, in trade or commerce, of goods or services to a consumer, give to the consumer a document that evidences a warranty against defects that does not comply with the prescribed requirements.
7. Regulation 90 of the *Competition and Consumer Regulations 2010 (Cth)* (**Regulations**) prescribes requirements for the purposes of section 102 of the ACL. The following text is required to be included in the warranty against defects:

*Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. (Prescribed Text)*

## **CONDUCT OF CONCERN**

8. Prior to August 2020 the Lifestyle Mobility terms and conditions contained the clause:

*Implied warranties, including those of merchantability, and fitness for a particular purpose are excluded. Liabilities for consequential damages are excluded. This warranty gives you specific rights and you may also have other rights under federal and state consumer laws. (Clause)*

9. The Commissioner is concerned the Clause could mislead consumers as to their rights under the ACL, in particular consumer guarantees under the ACL.

10. In addition, prior to September 2020 the Lifestyle Mobility terms and conditions failed to include the Prescribed Text as required by the ACL for warranties against defects.

## **CONTRAVENTIONS**

11. The Commissioner considers and Lifestyle Mobility acknowledge, that it is likely Lifestyle Mobility may have:

11.1. Made false or misleading representations in connection with the supply of goods and services concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy in contravention of sections 29(1)(m) and 151(1)(m) of the ACL due to the Clause in the terms and conditions as stated in paragraph 8 above; and

11.2. Failed to ensure that the terms and conditions for the warranty against defects included the Prescribed Text in contravention of sections 102 and 192(1) of the ACL.

## **LIFESTYLE MOBILITY'S RESPONSE**

12. Lifestyle Mobility:

12.1. Has cooperated with the Commissioner's investigation;

12.2. Has worked with the Commissioner to resolve its concerns; and

12.3. Is prepared to publicly commit by way of this Undertaking to take measures outlined in paragraph 14 below.

## **COMMENCEMENT OF UNDERTAKING**

13. This Undertaking comes into effect when:

13.1. The Undertaking is executed by Lifestyle Mobility; and

13.2. The Commissioner accepts the Undertaking so executed.

**UNDERTAKING BY LIFESTYLE MOBILITY FOR THE PURPOSES OF SECTION 218 OF THE ACL**

14. Lifestyle Mobility gives the following undertaking to the Commissioner for the purposes of section 218 of the ACL:

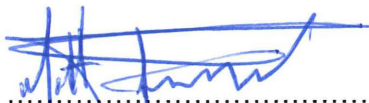
- 14.1. Lifestyle Mobility will ensure that the Clause is removed from the terms and conditions;
- 14.2. Lifestyle Mobility will ensure that the Prescribed Text is included in the terms and conditions.
- 14.3. Lifestyle Mobility will ensure that any terms and conditions of its standard form contracts will not mislead consumers as to their rights under the Australian Consumer Law.

**ACKNOWLEDGMENTS**

15. Lifestyle Mobility acknowledge that:

- 15.1. Consumer and Business Services (**CBS**) may make this undertaking publicly available including by publishing it on CBS' public register of Undertakings on its website;
- 15.2. CBS may, from time to time, make public reference to the Undertaking including in news media statements and in CBS publications; and
- 15.3. This Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**EXECUTED BY Lifestyle Mobility Pty Ltd pursuant to section 127(1) of the Corporations Act 2001 (Cth) by:**

  
.....  
**Signature of director**

**MATTHEW FRASER**  
.....

**Name of director (print)**

**Date** 12/11/20

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

  
.....

**Dini Soulio**

**Commissioner for Consumer Affairs (SA)**

**Date:** 2/12/20