



**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:

**Bramalco Pty Ltd**  
**ACN 008 160 334**

**PERSONS GIVING THIS UNDERTAKING**

1. This Undertaking is given to the Commissioner for Consumer Affairs by Bramalco Pty Ltd, 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. Bramalco Pty Ltd (ACN 008 160 334) ("Bramalco") is incorporated under the *Corporations Act 2001* and registered in South Australia. Bramalco is a member of the Modern and Bramalco Group of companies and trades under the business name "Modern".
3. Bramalco provides home improvement products such as roller shutters, plantation shutters, solar and roofing.
4. In providing these services, Bramalco engage sales staff to visit consumers' homes, either in response to consumers requesting a quote for Bramalco products and services or by unsolicited door-to-door sales.

**CONDUCT OF CONCERN**

5. Between January 2015 and July 2016, CBS received a number of complaints from consumers in relation to their dealings with Bramalco. In particular, consumers complained that Bramalco had:
  - 5.1. Entered into unsolicited consumer agreements with consumers for roller shutters and:
    - 5.1.1. failed to inform the consumer of their cooling off rights;
    - 5.1.2. refused to allow the consumer to exercise their cooling off rights;
    - 5.1.3. told the consumer they had no cooling off rights; and
    - 5.1.4. failed to provide the consumer with a copy of the contract.
  - 5.2. Taken deposits and installed products within 10 days of entering into unsolicited consumer agreements with consumers;
  - 5.3. Attended residential premises for the purposes of conducting door-to-door sales and failed to leave the premises when requested by a consumer.
6. In addition to the matters referred to in paragraph 5, some of the contracts entered into with consumers contained the following clause:

A handwritten signature or initials in the bottom right corner of the page.

*I/We acknowledge that I/We have read all the terms and conditions stated overleaf and that I/We contacted Modern Solar and invited them or their Employees or Agents to the above address today solely for the purpose of entering into negotiations relating to the supply of goods and services prescribed and outlined in the agreement authorised by me/us with them today.*

*Further, it was made clear from the outset that this visit was not to provide me/us with a quote for this work but rather to undertake an assessment of the scope and nature of the work to be done, calculate the normal cost of this work and then negotiate a savings amount that I/we were more than happy with and if not there is no obligation to proceed.*

*I/we fully understand that this agreement is a contract of work and is not subject to any cooling off period.*

7. The Commissioner is concerned that the above clause purports to have the consumer agree that the agreement entered into with a consumer is not an unsolicited consumer agreement so as to deprive the consumer of their termination rights under the ACL and Bramalco avoids its obligations under the ACL in relation to unsolicited consumer agreements.
8. The Commissioner is concerned that the clause outlined in paragraph 6 could amount to a false or misleading representation concerning the existence of a consumer's rights under an unsolicited consumer agreement, in particular, a consumer's termination rights.
9. Furthermore, in a letter from Bramalco to the Commissioner dated 31 March 2016, Bramalco stated it had "*taken the unprecedented step to direct the General Managers of Bramalco SA that ALL contracts MUST be placed on "Ten Day Cooling off paperwork" regardless of the source in which it was generated.*" Despite this assurance, CBS received a further complaint from a consumer in July 2016 regarding a contract she signed with Bramalco that contained the clause outlined in paragraph 6.
10. The Commissioner is concerned about the potential harm these practices and terms used in the contracts could cause to consumers.

#### RELEVANT PROVISIONS

11. Under the definition of ***unsolicited consumer agreement***, an agreement is an unsolicited consumer agreement if the consumer did not invite the dealer to come to that place, or to make a telephone call, for the purposes of entering into negotiations relating to the supply of those goods or services, however an invitation merely to quote a price for a supply is not taken to be an invitation to enter into negotiations for a supply. (Section 69 of the ACL)

#### CONTRAVENTIONS

12. The Commissioner considers, and Bramalco acknowledges, that by engaging in the conduct described at paragraphs 5 and 6 above, it is likely that Bramalco has:
  - 12.1. Engaged in misleading or deceptive conduct in contravention of section 18(1) of the ACL;
  - 12.2. Made false or misleading representations in connection with the supply of goods and services concerning the existence of rights in contravention of sections 29(1)(m) or 151(1)(m) of the ACL;
  - 12.3. Failed to leave the premises of a consumer immediately at the request of the consumer in contravention of section 75(1) of the ACL;
  - 12.4. Contacted the prospective consumer for the purpose of negotiating an unsolicited consumer agreement within 30 days of being requested to leave the premises of the prospective consumer in contravention of section 75(2) of the ACL;

- 12.5. Entered into unsolicited consumer agreements with consumers without providing them with information as to their rights to terminate the agreement in contravention of section 76 of the ACL;
- 12.6. Failed to ensure the unsolicited consumer agreements it entered into complied with the statutory requirements of the ACL in contravention of section 79 of the ACL;
- 12.7. Failed to immediately return or refund money paid by consumers in accordance with unsolicited consumer agreements that had been terminated in accordance with section 82 of the ACL in contravention of section 84 of the ACL;
- 12.8. Supplied to a consumer under an unsolicited consumer agreement the goods or services to be supplied under the agreement during the period of 10 business days starting the first business day after the day on which the agreement was made, in contravention of section 86(1)(a) of the ACL; and
- 12.9. Accepted payments in connection with the goods or services to be supplied under an unsolicited consumer agreement during the period of 10 business days starting the first business day after the day on which the agreement was made, in contravention of section 86(1)(b) of the ACL.

### **COMMENCEMENT OF UNDERTAKING**

13. This Undertaking comes into effect when:

- 13.1. the Undertaking is executed by Bramalco; and
- 13.2. the Commissioner for Consumer Affairs accepts the Undertaking so executed.

### **UNDERTAKING BY BRAMALCO FOR THE PURPOSES OF SECTION 218 OF THE ACL**

14. Bramalco gives the following undertakings to the Commissioner for the purposes of s 218 of the ACL:

- 14.1. Bramalco acknowledges the Commissioner's concerns that the clause outlined in paragraph 6 is misleading and undertakes within 2 weeks of the Undertaking coming into effect, to review and remove or amend any similar clauses present in all other consumer contracts.
- 14.2. Bramalco undertakes that it will not make false or misleading representations concerning a consumer's termination rights.
- 14.3. Bramalco undertakes that it will comply with the obligations and requirements for unsolicited consumer agreements prescribed by the ACL.
- 14.4. Bramalco undertakes that within 3 months of the Undertaking coming into effect, Bramalco will have its existing consumer law compliance program reviewed by an independent compliance professional or legal practitioner with expertise in consumer law, with the detail of the review recorded in a written Independent Review Report. In conducting such review:
  - 14.4.1. The reviewer will review any existing complaint handling system to determine its effectiveness.
  - 14.4.2. The reviewer will conduct a risk assessment which identifies the areas where Bramalco is at risk of breaching the ACL; the likelihood of these risks occurring; and any gaps in Bramalco's existing procedures for managing these risks;


- 14.4.3. The reviewer will conduct a critical review of both the existing compliance program, including relevant policies, procedures and compliance training program, and its effectiveness in securing compliance with the ACL, in particular the conduct which is the subject of this Undertaking and any risks identified in 14.4.2;
- 14.4.4. The reviewer will make such recommendations as the reviewer considers necessary to ensure that the compliance program, including compliance training, is effective and updated to address the conduct which is the subject of this Undertaking and any risks identified in 14.4.2;
- 14.4.5. The reviewer will provide the Commissioner with a copy of the Independent Review Report no later than 30 days after the completion of the report.
- 14.4.6. Bramalco undertakes that within 3 months of it receiving the Independent Review Report, it will upgrade its existing compliance program, including training, in accordance with the recommendations set out in the Independent Review Report;
- 14.4.7. Bramalco will ensure its updated compliance program includes a consumer law complaints handling system capable of identifying, classifying, storing and responding to consumer law complaints.
- 14.4.8. Bramalco will, if requested by the Commissioner, provide documents and information in respect of matters the subject of the compliance program resulting from this Undertaking, including details relating to the implementation of Bramalco's upgraded compliance program.

**ACKNOWLEDGEMENTS**

**15. Bramalco acknowledges that:**

- 15.1. CBS will 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;
- 15.3. This undertaking in no way detracts from the rights and remedies available to any other person arising from the alleged conduct; and
- 15.4. This undertaking may be produced to any Court in respect of any proceedings alleging any future contraventions of the ACL.

**EXECUTED BY Bramalco Pty Ltd**

  
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**Signature (Sole Director)**

Date: 31/10/17

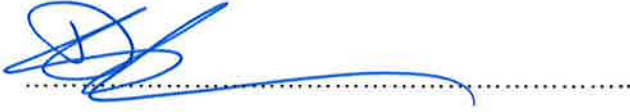
Print name: RONALD M. BAYLEY

  
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**Signature of Witness**

Name: CHRISTINE BAYLEY

Position: DIRECTOR

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: 8/11/17