

WESTERN AUSTRALIA

**ENFORCEABLE UNDERTAKING UNDER
THE AUSTRALIAN CONSUMER LAW (WA)**

BETWEEN

SILKBAY INVESTMENTS PTY LTD (ACN 057 135 430)

AND

COMMISSIONER FOR CONSUMER PROTECTION

RECITALS

WHEREAS:

- A. Silkbay Investments Pty Ltd carries on business under the registered business name 'Harber Real Estate' providing real estate agency services to consumers in Western Australia (**Agency**).
- B. For the purposes of this Enforceable Undertaking:
 - a. 'consumer' has the same meaning as it does under the *Fair Trading Act 2010* (WA).
- C. The Agency has distributed advertising material which lists properties that were listed or sold in the Perth suburb of Padbury.
- D. The Agency's advertising material consists of the following:
 - a. a flyer titled 'Padbury Property Traffic Report 1st January – 31st March 2014;
 - b. a flyer titled 'Padbury Property Traffic 1st April – 30th June 2014; and
 - c. a flyer titled 'Padbury Property Traffic Report 1st October – 31st December 2014.
- E. Each flyer:
 - a. lists the address and price of Padbury properties that had been sold, placed under offer, or listed on the market; and

- b. contains three images of a real estate sign that states 'Harber Real Estate', Harley Burke's name and telephone number and 'SOLD', 'UNDER OFFER' or 'FOR SALE', beside each list of addresses.
 - c. In each flyer, the listed properties include properties that had not been listed with or sold by the Agency.
- F. The Commissioner for Consumer Protection (**Commissioner**) is of the view that the Agency's advertising materials may, contrary to sections 18 and 34 of the *Australian Consumer Law (WA)*, mislead consumers as to the quantity of the services provided by the Agency and Harley Burke.
- G. This Enforceable Undertaking is accepted under section 18 of the *Australian Consumer Law (WA)* by the Commissioner.
- H. This Enforceable Undertaking does not prevent the Commissioner from taking any action in respect of the matters the subject of this Enforceable Undertaking.
- I. Upon being satisfied of a breach, this Enforceable Undertaking is enforceable by a court upon the Commissioner's application.
- J. This Enforceable Undertaking is not confidential and may be published by the Commissioner.

UNDERTAKING

Silkbay Investments Pty Ltd, upon this Enforceable Undertaking being accepted by the Commissioner, **UNDERTAKES**, pursuant to section 218 of the *Australian Consumer Law*, that:

1. Where any advertisement created, published and/or distributed by or on behalf of the Agency includes any statement or representation that properties have been sold or listed in a certain geographic area, then unless the Agency has acted as agent in respect of the sale or listing of each of those properties, the Agency will include, in a prominent position in the advertisement in an easily legible font and font size, the following:

"Please be aware that not all properties listed were sold or listed by Harber Real Estate."

Signed for and on behalf of:

A. SILKBAY INVESTMENTS PTY LTD

In accordance with section 127 of the *Corporations Act 2001 (Cth)*

STEVEN LEE HARBER

Full Name of Director

Signature of Director

GUIDO BURRO

Full name of Director/Secretary

Signature of Director/Secretary

C. COMMISSIONER FOR CONSUMER PROTECTION)

Signature

Date undertaking accepted: 30 January 2015

WESTERN AUSTRALIA

**ENFORCEABLE UNDERTAKING UNDER
THE AUSTRALIAN CONSUMER LAW (WA)**

BETWEEN

Harley William Francis Burke

AND

COMMISSIONER FOR CONSUMER PROTECTION

RECITALS

WHEREAS:

- A. Silkbay Investments Pty Ltd carries on business under the registered business name 'Harber Real Estate' providing real estate agency services to consumers in Western Australia (**Agency**).
- B. Harley William Francis Burke (**Burke**) is employed by the Agency as a sales representative.
- C. For the purposes of this Enforceable Undertaking:
 - a. 'consumer' has the same meaning as it does under the *Fair Trading Act 2010* (WA).
- D. The Agency has distributed advertising material which lists properties that were listed or sold in the Perth suburb of Padbury.
- E. The Agency's advertising material consists of the following:
 - a. a flyer titled 'Padbury Property Traffic Report 1st January – 31st March 2014;
 - b. a flyer titled 'Padbury Property Traffic 1st April – 30th June 2014; and
 - c. a flyer titled 'Padbury Property Traffic Report 1st October – 31st December 2014.
- F. Each flyer:
 - a. lists the address and price of Padbury properties that had been sold, placed under offer, or listed on the market; and

- b. contains three images of a real estate sign that states 'Harber Real Estate', Harley Burke's name and telephone number and 'SOLD', 'UNDER OFFER' or 'FOR SALE', beside each list of addresses
 - c. In each flyer, the listed properties include properties that had not been listed with or sold by the Agency.
- G. The Commissioner for Consumer Protection (**Commissioner**) is of the view that the Agency's advertising materials may, contrary to section 18 and 34 of the *Australian Consumer Law (WA)*, mislead consumers as to the quantity of the services provided by the Agency and Harley Burke.
- H. This Enforceable Undertaking is accepted under section 18 of the *Australian Consumer Law (WA)* by the Commissioner.
- I. This Enforceable Undertaking does not prevent the Commissioner from taking any action in respect of the matters the subject of this Enforceable Undertaking.
- J. Upon being satisfied of a breach, this Enforceable Undertaking is enforceable by a court upon the Commissioner's application.
- K. This Enforceable Undertaking is not confidential and may be published by the Commissioner.

UNDERTAKING

HARLEY BURKE, upon this Enforceable Undertaking being accepted by the Commissioner, **UNDERTAKES**, pursuant to section 218 of the *Australian Consumer Law*, that:

1. Where any advertisement created, published and/or distributed by or on behalf of Burke or any licensed real estate agency at which Burke is employed or engaged includes any statement or representation that properties have been sold or listed in a certain geographic area, then unless Burke or the real estate agency has acted as agent in respect of the sale or listing of each of those properties, the Agency will include, in a prominent position in the advertisement in an easily legible font and font size, the following:

"Please be aware that not all properties listed were sold or listed by Harley Burke and/or [Agency Name]"

Signed for and on behalf of:

A. **HARLEY WILLIAM FRANCIS BURKE**



B. **COMMISSIONER FOR CONSUMER PROTECTION)**

Signature

Date undertaking accepted: 19/11/15 30 January 2015