

WESTERN AUSTRALIA

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

BETWEEN

E'CO AUSTRALIA PTY LTD (ACN 071 756 039)

AND

MARK BRIAN KEAY

AND

COMMISSIONER FOR CONSUMER PROTECTION

RECITALS

- A. The Commissioner for Consumer Protection in Western Australia (**Commissioner**) commenced proceedings CIV 2450 of 2012 in the Supreme Court of Western Australia against E'Co Australia Pty Ltd (ACN 071 756 039) (**ECO**) and its managing Director Mark Brian Keay (**Mr Keay**).
- B. The Commissioner sought civil penalties, declarations, and corrective advertising orders under the *Australian Consumer Law (WA)* alleging that ECO and Mr Keay contravened the *Australian Consumer Law (WA)* in that, by locating 300 clothing collection bins at 205 places around the Perth metro area, which collection bins displayed combinations of text and images shown at **SCHEDULE 1.1** and **SCHEDULE 1.2**, may have misled consumers *inter alia* into donating unwanted clothing and goods on the basis that ECO was a charitable or non-profit enterprise, whereas ECO is a commercial enterprise.
- C. In doing so, and to the extent that the conduct was unlawful conduct in trade or commerce, donations of unwanted clothing or goods that would

have been deposited into the collection bins of genuine charities ~~might~~
~~have been made~~ were not made.

- 115 MC
- D. For the period 1 January 2011 to 4 November 2011, ECO and Mr Keay accept that the collection bins as they then appeared may have contravened the *Australian Consumer Law (WA)*.
- E. ECO and Mr Keay are contrite and wish now to voluntarily donate \$100,000 to any charitable causes or entities which appear to the Commissioner appropriate, and to make a public apology.

UNDERTAKINGS

Corrective advertising

1. ECO & Mr Keay shall, within **28 days** from the date that this enforceable undertaking is accepted by the Commissioner, cause to be published in *The Weekend West Australian* newspaper a corrective advertisement in the form or in substantially the same form as the draft annexed at **SCHEDULE 2**.
2. The corrective advertisement must:
 - 2.1. Not be less than one-half page of the *Weekend West Australian*
 - 2.2. Appear within the first 20 pages
 - 2.3. Prominently display the *Australian Consumer Law (WA)* at the top right-hand side, in a size proportionate to the balance of the advertisement as that contained in the draft at Schedule 2.
 - 2.4. May display the ECO logo beneath the header described at clause 2.5, but in a size no larger than either of the logos described in clauses ~~2.3~~ & ~~2.4~~.

Donation

3. ECO & Mr Keay shall pay to the Commissioner a donation of **\$100,000**, which shall be payable within eighteen (18) months commencing one month from the date of acceptance of this undertaking by the Commissioner, in amounts of not less than **\$5,500** per month, for which ECO and Mr Keay shall be jointly and severally liable.
4. The Commissioner shall, from time to time, in the Commissioner's absolute discretion, apply any amount received pursuant to clause ~~2~~ ³ to be applied to any charitable cause or entity as shall appear to the Commissioner in her absolute discretion appropriate, but the Commissioner nor the State of Western Australia shall not be entitled to retain any part of the donation.

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5. The Commission will make public and notify ECO and Mr Key of the details of any charitable donation made pursuant to ~~this paragraph~~. *clause 4.*

Signed for and on behalf of:

A. E'CO AUSTRALIA PTY LTD

ACN: (ACN 071 756 039)
In accordance with section 127 of the
Corporations Act 2001 (Cth)

_____))
In his capacity as Director 1

_____))
Signature of Director 1 (& Secretary)

_____))
Full name of Director 2
In his capacity as Director 2

_____))
Signature of Director 2 (if required)

B. MARK BRIAN KEAY)
In his own right

_____))
Signature

**C. COMMISSIONER FOR
CONSUMER PROTECTION)**

_____))
Signature

20th day of March 2014

SCHEDULE 1.1

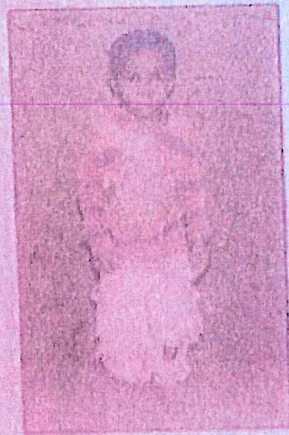


COM.AU

- A Not For Profit Organisation Saving Tomorrow's Environment - Today -



**Sending your old clothes, shoes
& manchester to Africa !**



Garlot ready for church

WANTED!

**Mens, Ladies
& Kids**

**+ Educating our kids
with "Pirate" shows to:**

Reduce * Re-use * Recycle

SCHEDULE 1.2



BREAST CANCER
FOUNDATION
OF WESTERN AUSTRALIA

Thank you
9302 3456

**HELP SUPPORT PEOPLE
WITH BREAST CANCER!**

**Wanted
Clothes, Shoes,
Bags & Manchester**

In conjunction with



Reducing - Re-using - Recycling

**C
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SCHEDULE 2



Government of Western Australia
Department of Commerce
Consumer Protection

australian consumer law 

CORRECTIVE ADVERTISING – E'CO AUSTRALIA PTY LTD

E'Co Australia Pty Ltd (E'Co) operates a clothing collection bin business. From 1 January 2011 to 4 November 2011 E'Co placed clothing collection bins in the Perth metropolitan area which may have misled the public into believing it was a charity. E'Co is a commercial enterprise.

PHOTOGRAPH AS PER SCHEDULE 1.1	PHOTOGRAPH AS PER SCHEDULE 1.2
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The Commissioner for Consumer Protection in Western Australia (Commissioner) is concerned that this conduct breaches provisions of the *Australian Consumer Law (WA)* (ACL) and took action in the Supreme Court of Western Australia.

This court action has been settled by the parties. E'Co and its director, Mark Keay, have agreed to jointly pay to the Commissioner the sum of \$100,000. This money will be distributed by the Commissioner as a donation to licensed charities in Western Australia of the Commissioner's choice.

E'Co apologies^{ises} to the Western Australian public for any wrong impression created in respect of its clothing collection business. E'Co has previously entered into an enforceable undertaking under the ACL and has now taken steps to clearly identify on each of its clothing collection bins that it is a commercial enterprise and not a charity.

This corrective advertising has been paid for and placed by E'Co at the request of the Commissioner.

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AND COMMISSIONER FOR CONSUMER PROTECTION

Addendum 1 - Details of charitable donations made pursuant to clause 4.

On 5 March 2015 the Commissioner for Consumer Protection distributed donations of \$10,000 to each of the following licensed charities:

1. Australian Fund for Overseas Relief and Development in Kenya Inc.
2. Future Happiness Association Inc.
3. Manna Inc.
4. Uni Camp for Kids Inc.

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Addendum 2 - Details of charitable donations made pursuant to clause 4.

On 1 December 2015 the Commissioner for Consumer Protection distributed donations to each of the following licensed charities:

1. \$10,000 to Australia Red Cross Society
2. \$15,000 to Spine and Limb Foundation (Inc)
3. \$10,000 to St Vincent De Paul Society (WA) Incorporated
4. \$15,000 to Good Samaritan Industries
5. \$10,000 to Anglicare WA Inc