



ACT
Government

Chief Minister, Treasury and
Economic Development

Fair Trading (Australian Consumer Law) Act 1992

Undertaking to the Commissioner for Fair Trading given for the purposes of section 218 of the Australian
Consumer Law (ACT)

UNDERTAKING TO THE COMMISSIONER FOR FAIR TRADING BY Belconnen Automotive Pty Limited ACN 151 606 138

PERSON GIVING UNDERTAKING

- 1) This undertaking is given to the Commissioner for Fair Trading by Belconnen Automotive Pty Limited ACN 151 606 138, ABN 70 151 606 138 trading as Gerald Slaven located at 2 Josephson Street Belconnen, ACT for the purpose of section 218 of the Australian Consumer Law (ACT) (the **ACL**).

BACKGROUND

- 2) Belconnen Automotive Pty Ltd operates a business that services and repairs motor vehicles in premises trading as Gerald Slaven.
- 3) The services provided include the servicing and repair of motor vehicles. Gerald Slaven also carries out ACT vehicle registration inspections.
- 4) Approved inspection stations are the premises at which authorised examiners may perform vehicle inspections for registration purposes. Those premises are approved under Division 6.3.3 of the Road Transport (Vehicle Registration) Regulation 2000 (Vehicle Registration Regulation). Gerald Slaven is an approved premises under Division 6.3.3 of the Vehicle Registration Regulation.
- 5) Gerald Slaven employs qualified mechanics, some of whom are also authorised examiners appointed under Division 6.3.2 of the Vehicle Registration Regulation to perform vehicle inspections for registration purposes in the ACT (**authorised examiners**).
- 6) If an authorised examiner inspects or tests a vehicle, the authorised examiner must issue a certificate of inspection for the vehicle, certifying either that the vehicle, its parts and equipment comply with the applicable vehicle standards or that the vehicle, its parts or equipment do not comply and stating the ways in which it does not comply (**certificates of inspection**).
- 7) The applicable vehicle standards are set out in Schedule 1 of the Vehicle Registration Regulation.
- 8) Division 6.3.5 section 145(b) of the Vehicle Registration Regulation sets out the requirement that an authorised examiner must not inspect or test a vehicle other than at approved premises.

- 9) It is alleged that between 1 August and 30 November 2015 three authorised examiners employed by Gerald Slaven issued certificates of inspections to 96 motor vehicles that were inspected at other than approved premises.
- 10) Gerald Slaven acknowledges that by issuing a certificate of inspection to a consumer in circumstances where the vehicle was inspected at other than approved premises, Gerald Slaven engaged in conduct that is likely to have contravened section 29(l)(b) of the ACL, namely by representing to a consumer that their vehicle was inspected and tested at approved premises when this was not the case.
- 11) To address the Commissioner for Fair Trading's concern Gerald Slaven has offered the Commissioner for Fair Trading this undertaking in accordance with section 218 of the ACL.
- 12) In addition to its obligations below, Gerald Slaven agrees to make a contribution to the Snowy Hydro SouthCare Rescue Helicopter Service in the sum of \$6,000.

COMMENCEMENT

- 13) This undertaking comes into effect when:
 - a) the undertaking is executed by Gerald Slaven; and
 - b) the Commissioner accepts the undertaking so executed.

UNDERTAKINGS

- 14) Gerald Slaven undertakes for the purpose of section 218 of the ACL that:
 - a) It will not in trade or commerce:
 - i. make representations to consumers that their vehicles have been tested in accordance with Division 6.3.5 section 145(b) of the Road Transport (Vehicle Registration) Regulation 2000 unless the vehicle has been inspected or tested at approved premises.
 - ii. make representations to consumers that their vehicles are deemed compliant for ACT vehicle registration purposes, unless Gerald Slaven has conducted suitable testing to determine that the vehicles do, in fact, comply with the applicable vehicle standards.
- 15) Gerald Slaven undertakes for the purpose of section 218 of the ACL to:
 - a) issue a statement to all staff, which commits Gerald Slaven to the improvements described below. The statement will, amongst other things:
 - i. affirm Gerald Slavens' commitment to compliance with the requirements of the road transport laws that apply to authorised examiners performing their duties and the ACL;
 - ii. inform staff of the importance of their role in the creation and maintenance of a culture of compliance and reporting.

Gerald Slaven will provide a copy of the statement to Access Canberra once issued.

b) Incorporate the forgoing principles into a corporate mission statement that is on display in a prominent position.

iii. Undertake a needs analysis to identify any training enhancements that may be required for all staff/management.

iv. In any case, Gerald Slaven is to ensure that staff/management undertake training regarding consumer guarantee provisions of the of the ACL within the next 4 months, and then at least very two years and;

v. to Authorised Examiners employed by Gerald Slaven, training within the next six months (or within six months of their appointment), and again at least once every two years, in

- A. authorised premises equipment and its maintenance/calibration;
- B. procedure for conducting vehicle inspections, including brake testing;
- C. completion of Certificate of Inspection and associated record-keeping; and
- D. misleading and deceptive conduct, false representations and consumer guarantee provisions of the ACL.

Gerald Slaven will provide Access Canberra written confirmation of the attendance of the above employees at the initial training. Gerald Slaven will within 2 weeks of completion of the training referred to in paragraph 17 (c) above, provide Access Canberra a written statement or certificate from a suitably qualified legal or compliance professional who conducts the training verifying that such training has occurred.

16) To the extent that it has not already done so, Gerald Slaven will implement an internal audit program to ensure that all ACT vehicle registration inspections they undertake are carried out at approved premises in accordance with Division 6.3.5, section 145(b) of the Vehicle Registration Regulation.

DURATION

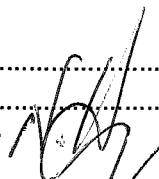


17) These undertakings have effect for a period of 2 years.

ACKNOWLEDGEMENTS

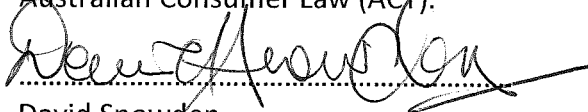


18) Gerald Slaven acknowledges that:

- c) Access Canberra will publish this undertaking on the Access Canberra website;
- d) Access Canberra will, from time to time, make public reference to the undertaking including in news media statements and in Access Canberra publications; and
- e) this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed by Belconnen Automotive Pty Limited ACN 151 606138, ABN 70 151 606138 as
Gerald Slaven in accordance with section 127 of the *Corporations Act 2001*:

.....
Director  Nathan Hayes Director/Secretary
DATED this  day of  2016.

ACCEPTED by the ACT Commissioner for Fair Trading pursuant to section 218 of the
Australian Consumer Law (ACL).


.....
David Snowden
ACT Commissioner for Fair Trading
DATED this  day of  2016.