



ACT  
Government

Justice and Community Safety

**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  
Commonwealth Motors Pty Limited ACN 008 392 505**

**PERSON GIVING UNDERTAKING**

- 1) This undertaking is given to the Commissioner for Fair Trading by Commonwealth Motors Pty Limited ACN 008 392 505 , ABN 77 008 392 505 trading as Commonwealth Motors located at 158 Melrose Drive Phillip, ACT for the purpose of section 218 of the Australian Consumer Law (ACT) (the ACL).

**BACKGROUND**

- 2) Commonwealth Motors Pty Ltd is both a licensed motor vehicle dealer and a licensed motor vehicle repairer. The current motor vehicle repairers license number is 19500026
- 3) Commonwealth Motors is also an Approved Premises (AP).
- 4) AP's 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 (the Regulation).
- 5) Commonwealth Motors employs qualified mechanics, some of whom are also authorised examiners appointed under Division 6.3.2 of the 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 Regulation. Specifically, Division 1.9.2, section 1.132 of the Schedule sets out requirements for the performance of braking systems. The prescribed measuring device (in this instance) and requirements are contained in Schedule 2, Part 2.1.3 of the Regulation.

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- 8) On 11 March 2014 Office of Regulatory Services (ORS) audit officers conducted a site visit at Commonwealth Motors, 158 Melrose Drive Phillip ACT. A number of brake test slips were examined. The data and graphical configuration on the test slips indicate that the readings were obtained by the machine being used contrary to the manufacturer's instructions. There are a number of established indicators that are used to determine the validity of a brake test and, upon analysis, it is apparent that these indicators were not present for a number of tests.
- 9) For the 6 month period prior to 11 March 2014 it is alleged a total of 27 false brake tests were conducted at Commonwealth Motors. These inspections were carried out by Authorised Examiners who were both employees of Commonwealth Motors. This has resulted in the production of false readings on 27 occasions that purportedly indicate that the brakes have passed inspection.
- 10) When ORS raised these concerns with Commonwealth Motors it acknowledged it had engaged in a practice that allegedly contravenes section 29 (1) (b) of the ACL by representing to consumers that their brakes were tested and deemed compliant for ACT vehicle registration purposes, when this in fact was false.
- 11) To address the Commissioner for Fair Trading's concerns, Commonwealth Motors has offered the Commissioner for Fair Trading this undertaking in accordance with section 218 of the ACL.

#### COMMENCEMENT

- 12) This undertaking comes into effect when:
  - a) the undertaking is executed by Commonwealth Motors; and
  - b) the Commissioner accepts the undertaking so executed.

#### UNDERTAKINGS

- 13) Commonwealth Motors 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 brakes have been tested and compliant with section 1.132 of schedule 1 of the Road Transport (Vehicle Registration) Regulation 2000 unless the brakes have been tested on a roller brake testing machine, a skid plate testing machine or a vehicle decelerometer in accordance with the prescribed requirements set out in Schedule 2 of the Road Transport (Vehicle Registration) Regulation 2000 and according to the manufacturer's operating instructions.

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- ii. make representations to consumers that their vehicles are deemed compliant for ACT vehicle registration purposes, unless Commonwealth Motors has conducted suitable testing to determine that the vehicles do, in fact, comply with the applicable vehicle standards.

14) Commonwealth Motors, through the Dealer Principal, undertakes for the purpose of section 218 of the ACL to:

- a) issue a statement to all staff, which commits Commonwealth Motors to the improvements described below. The statement will, amongst other things:
  - i. affirm Commonwealth Motors' 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;

Commonwealth Motors will provide a copy of the statement to the ORS once issued.

- b) review and, where required, revise its job descriptions to reinforce that all employees are accountable for compliance in their areas of responsibility;
- c) ensure that the following training is provided by a suitably qualified legal or compliance professional:
  - i. to Commonwealth Motors staff: Training in the misleading and deceptive conduct, false representations and consumer guarantee provisions of the ACL within the next four months, and then at least once every two years;
  - ii. to Authorised Examiners employed by Commonwealth Motors: 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.

Commonwealth Motors will provide to the ORS written confirmation of the attendance of the above employees at the initial training. Commonwealth Motors will within 2 weeks of completion of the training referred to in paragraph 14 (c) above, provide to the ORS a written statement or certificate from the suitably qualified legal or compliance professional who conducts the training verifying that such training has occurred.

15) To the extent that it has not already done so, implement an internal audit program to identify and in turn establish, a quality assurance regime to ensure that brake tests are carried out in accordance with relevant legislation and, that brake test slips are attached to Commonwealth Motors' copy of the certificate of examination. The internal audit program will be implemented within 30 days of the undertaking being executed.

16) Commonwealth Motors wishes to play a positive role in improving the reliability of authorised testing procedures and recording of results. As such, it will co-operate with the

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ORS and its associates in the assessment of alternative authorised equipment or suggested procedures required for authorised vehicle inspections including brake testing equipment. Such co-operation may include the use of equipment in a workshop environment.

17) Commonwealth Motors will make a contribution to Snowyhydro SouthCare in the sum of \$7,500 within 30 days of this undertaking being executed.

#### DURATION

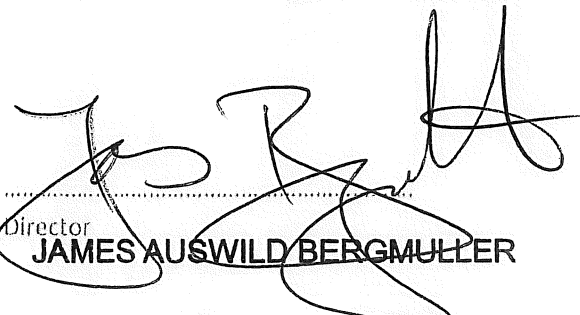
18) These undertakings have effect for a period of 2 years.


#### ACKNOWLEDGEMENTS

19) Commonwealth Motors acknowledges that:

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


Executed by Commonwealth Motors Pty Ltd ACN 008 392 505, ABN 77 008 392 505 in accordance with section 127 of the *Corporations Act 2001*:

  
.....  
Director  
**JAMES AUSWILD BERGMULLER**

  
.....  
Director/Secretary  
**DESMOND JOHN BRADLEY**

DATED this 16<sup>TH</sup> day of SEPTEMBER 2014.

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

  
.....  
Brett Phillips

ACT Commissioner for Fair Trading

DATED this 22 day of September 2014.

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