

## TRADE PRACTICES ACT 1974

### UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF

#### SECTION 87B

BY

**T S BURSTOW FUNERALS PTY LTD - ACN 009 705 971**

#### BACKGROUND

1. T S Burstow Funerals Pty Ltd (Burstows), ACN 009 705 971, is incorporated in the State of Queensland. Burstows principal trading activity is the provision of funeral services.
2. As part of the services offered, Burstows maintain a Funeral Benefits Trust Fund Accounts, operated under the Funeral Benefit Business Act 1982, to allow consumers to save funds to contribute towards the cost of a pre-paid funeral.
3. During 1999 management of Burstows attended industry seminars during which information was obtained regarding the application of the Goods and Services Tax (GST) to funeral services after 1 July 2000. From the information provided at these seminars Burstows formed the view that their pre-paid funeral fund contracts did not create existing rights to a GST free service. Burstows understanding was that pre-2 December 1999 contracts would attract a GST free adjustment in line with the original value of the contract and this adjustment would be made at the time of supply.
4. In early 2000, Burstows commenced a marketing process with respect to consumers who had contributed funds to Burstows' Funeral Benefits Trust Fund. In some cases Burstows approached existing customers and on other occasions they responded to enquiries from existing customers. This marketing process involved consumers entering into contracts for the provision of funeral extra incidentals at pre-determined prices, subject to cost increase clauses.
5. At another industry seminar in June 2000 Burstows received further advice that indicated a change in approach to funeral funds. This advice was to the effect that any document outlining prices and containing signatures constitutes an agreement. Therefore all agreements written after 30 November 1999 were liable for GST at the time of the next business activity statement. As Burstows had elected to provide monthly business activity statements they believed they were required to ensure that GST was collected on pre-paid funerals at that time.

6. On or about 28 June 2000 Burstows issued letters to pre-paid clients, including those whose contracts had been recently re-negotiated, seeking payment of the GST before the end of July 2000.
7. Burstows were acting on an incorrect assumption. The fact is that funeral fund contracts entered into before 2 December 1999 may create existing rights that will not attract GST even if the funeral takes place after 1 July 2000. If a consumer entered into a contract before 2 December 1999 for a funeral, then any payments the consumer has made or will make will be GST-free until the earlier of:
  - an opportunity for review of the price arises before 1 July 2005, or
  - 1 July 2005.

This meant that by cancelling a pre- December contract, and entering into a new contract after 2 December 1999 each consumer had acquired a GST liability that would otherwise not apply, and Burstows were requiring them to pay this immediately.

8. As a result of complaints to the office of Ian MacFarlane MP, Federal Member for Groom, MacFarlane sought to resolve the matter with Burstows. MacFarlane sought to obtain refunds for consumers that have paid GST on their pre-paid funeral contract, and to have those with pre - Dec 1999 contracts re-instated and a new contract drawn up just for the incidentals to the original contract. That way GST would only be payable on the incidentals and not on the entire contract. To this end, Burstows created a covering update agreement to attach to all pre-2 December 1999 that have since been updated.
9. MacFarlane and Burstows agreed on a process of rectification that both parties were happy with, but MacFarlane was concerned that the resolution failed to provide for an auditing process that ensured Burstows would rectify these issues in all cases. Accordingly MacFarlane contacted the Australian Competition and Consumer Commission (the Commission) and asked the Commission to ensure the agreed resolution was implemented by Burstows.
10. The Commission acknowledges that Burstows acted on advice obtained from accountants and solicitors in consultation with the Australian Taxation Office, however it was considered that the conduct had the potential to mislead or deceive consumers about the application of the GST to pre-paid funeral contracts, and was therefore at risk of contravening section 52 and 75AU of the *Trade Practices Act 1974* (the Act).
11. Burstows and the Commission have reached this agreement to ensure all consumers effected by the conduct are dealt with fairly and quickly.

#### **COMMENCEMENT OF UNDERTAKING**

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

## **UNDERTAKINGS**

13. Burstows undertake to the Commission that:

- a) Burstows will immediately appoint an independent Accountant to audit the T S Burstow Funerals Pty Ltd Funeral Benefit Business Trust Fund.
- b) The Accountant will identify all clients who had a pre - Dec 1999 contract and subsequently entered into a post -2 Dec 1999 contract as a result of Burstows marketing process.
- c) Burstows will ensure that any pre - Dec 1999 contract that was renewed or redrawn post 2 Dec 1999 be reinstated, and a new contract drawn only for incidentals additional to the original contract.
- d) Burstows will issue letters to all affected clients advising them of the error in re-drawing pre - Dec 1999 contracts, and providing refunds where appropriate to consumers that have paid an amount for GST prior to the funeral service being provided.
- e) The Accountant will audit the process to ensure that all consumers identified in paragraph 13(b) above are properly dealt with and reinstated in accordance with this agreement. The accountant will certify that the procedure has been completed.
- f) Burstows will provide the Commission with a copy of the Accountants audit report and will also advise the Commission when all necessary actions outlined above have been completed.
- g) All necessary action will be taken and the accountant's report will be provided to the Commission by the end of September 2000.

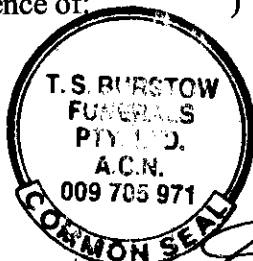
## **ACKNOWLEDGMENTS**

Burstows acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission may, at its absolute discretion, from time to time publish and publicly refer to this undertaking.

Burstows acknowledges and accepts that this undertaking in no way derogates from the rights and remedies available to any other person arising from Burstows conduct.

**IN WITNESS OF THIS UNDERTAKING AND ITS AGREEMENTS**

THE COMMON SEAL of )  
T S Burstow Funerals Pty Ltd (ACN 009 705 971) )  
was hereunto affixed by authority of )  
the Board of Directors in the presence of: )



ABN 80 009 705 971

DONALD CHARLES BURSTOW

Print Name (Director/Secretary)

[Signature]  
Signature

This ..... 21<sup>ST</sup> ..... day of AUGUST ..... 2000.

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974.

[Signature]

(Professor Allan Fels)  
Chairman

This ..... 31 ..... day of June ..... 2000.