

**TRADE PRACTICES ACT 1974**

**UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER  
COMMISSION GIVEN FOR THE PURPOSE OF SECTION 87B**

**BY**

**BURNAN PTY LTD  
(ACN 006 984 934)**

**AND**

**MR KEITH P.W. ROLSTON**

**PERSONS GIVING THIS UNDERTAKING**

1. This Undertaking is given to the Australian Competition & Consumer Commission (ACCC) by Burnan Pty Ltd (ACN 006 984 934) (Burnan) and Mr Keith P.W. Rolston (Mr Keith Rolston), both of 11 Winchester Way, Leeming, in the state of Western Australia, under section 87B of the *Trade Practices Act 1974* (TPA).

**BACKGROUND**

2. Burnan is incorporated in Western Australia and trades under the name *Résumé Service*.
3. Mr Keith Rolston is, and at all material times was, a Director and the Secretary of Burnan, and either took part in or was aware of the facts that gave rise to this matter.
4. Burnan is engaged in both:
  - a) Selling a *résumé* writing business to members of the public (the *Business Opportunity*); and
  - b) Supplying *résumé* writing services to members of the public (the *Services*).
5. The *Business Opportunity* involves the preparation of *résumés* and the marketing and operation of a *résumé* writing service as a business to be carried on from home. The *Business Opportunity* is sold across Australia.
6. The *Services* includes the writing and preparation of bound *résumés* for clients. Burnan sells the *Services* at \$90.00 for the compilation and preparation of one *résumé*, plus \$10.00 for each subsequent copy of the *résumé*.
7. From at least July 2004 and until at least February 2006 Burnan, in promoting the *Business Opportunity*, made certain representations concerning the business.
8. In particular, Burnan made representations that persons who purchased the *Business Opportunity* would “commence earning \$300 to \$500 immediately

training is completed.” In addition, an income chart (the Income Chart) (**Annexure A**) was used by Burnan in a Presentation Folder and was also published on Burnan’s web site at the uniform resource locator [www.resumeservice.com.au](http://www.resumeservice.com.au). The Income Chart contained:

- representations of a worst-case scenario regarding the level of demand for the Services; and
  - representations of the profits that were achievable based upon that level of demand as well as future profitability expected to be achieved by the Business Opportunity.
9. The ACCC advised Burnan of its concerns that Burnan had engaged in conduct that may have contravened sections 52 and 59 of the TPA, and that Mr Keith Rolston had taken part in or was aware of the facts that gave rise to the conduct.
  10. The ACCC assessed that representations concerning demand for Services and current and future profitability of the Business Opportunity made by Burnan in the promotion and sale of the Business Opportunity may have been contrary to fact and made without reasonable grounds in breach of sections 52 and 59(1) of the TPA.
  11. Burnan has acknowledged that the ACCC held concerns that the representations concerning demand for Services and current and future profitability of the Business Opportunity may have placed Burnan at risk of contravening sections 52 and 59(1) of the TPA.
  12. In response to the ACCC’s concerns Burnan and Mr Keith Rolston have offered the ACCC court enforceable undertakings pursuant to section 87B of the TPA in the terms set out below.

#### **COMMENCEMENT OF UNDERTAKINGS**

13. This Undertaking comes into effect when the ACCC accepts the Undertaking which has been executed by Burnan and Mr Keith Rolston.
14. Upon commencement of this Undertaking, Burnan (whether by itself or by its officers, employees, members, agents or otherwise) and Mr Keith Rolston undertake to assume the obligations set out in paragraphs 15 to 23.

#### **UNDERTAKINGS**

##### **Advertising and selling practices**

15. That, within 21 days of the commencement of this Undertaking, Burnan will use its best endeavours to arrange for a thorough review of all its advertising and selling practices to be conducted by an independent practitioner that is suitably qualified with expertise in trade practices law to ensure that any statements concerning demand for Services and current and future profitability are not misleading and/or deceptive and are made with reasonable grounds.

16. That, within 10 days of completing the undertaking referred to at paragraph 15 above, Burnan will use its best endeavours to provide the ACCC with an outline of any actions taken resulting from that review.
17. In addition, Burnan will cease making any representation in any of its advertising or promotional material that represents that persons who purchase the Business Opportunity will commence earning a specified amount per day after training has been completed.

#### **Advice**

18. Burnan undertakes that it will not, for a period of 3 years from the commencement of this Undertaking, enter into an agreement with a prospective purchaser of the Business Opportunity unless it has received from the prospective purchaser a signed statement in the form of **Annexure B** that the prospective purchaser has: -
  - a) received advice about the proposed Business Opportunity by either an independent legal advisor, business advisor or accountant (or all of those);
  - b) declined to receive any advice from an independent legal advisor, business advisor or accountant.
19. Burnan will ensure that all financial and legal information reasonably sought by an advisor, referred to in paragraph 18 above, is provided in order for that advisor to be able to make an informed decision when advising their client(s) on whether purchasing a prospective Business Opportunity is in their client's best interests.
20. Burnan will provide the prospective purchaser of the Business Opportunity, and/or their advisor with a suitable covering letter for the information referred to at paragraph 18 above, and which, in relation to any financial information, (a) makes clear the limits to which that financial information can be applied, (b) the need for independent inquiry, and (c) would include the basis (including any assumptions) upon which the information is calculated.

#### **Trade Practices Compliance program**

21. Within a period of 3 months from the commencement of this Undertaking, Burnan will establish a Trade Practices Compliance Program (the Compliance Program) in accordance with the requirements set out in **Annexure C**.
22. Burnan will maintain and will continue to implement the Compliance Program for a period of 3 years from the date of the Undertaking coming into effect.
23. As set out at paragraph 1.1 of **Annexure C**, Mr Keith Rolston will attend practical trade practices training in the terms as set out in **Annexure C**.

**ACKNOWLEDGEMENTS**

- 24. Burnan and Mr Keith Rolston acknowledge that the ACCC will make this Undertaking available for public inspection.
- 25. Burnan and Mr Keith Rolston further acknowledge that the ACCC will from time to time publicly refer to this Undertaking.
- 26. Burnan and Mr Keith Rolston acknowledge and accept that these Undertakings in no way derogate from the rights and remedies available to any other person arising from the alleged conduct.

**EXECUTED BY**

Burnan Pty Ltd (ACN 006 984 934)

In accordance with section 127 of the *Corporations Act 2001*:

*U. Rolston*  
Signature of Director

*K. Rolston*  
Signature of Director/Secretary

VALERIE J. ROLSTON  
Name of Director (print)

Keith P. W. Rolston.  
Name of Director/Secretary (print)

**AND**

*K. Rolston*  
Mr Keith P.W. Rolston



This 23 day of August 2006.

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

*Graeme Julian Samuel*  
Graeme Julian Samuel  
Chairperson

This 5 day of September 2006.

**OPERATE FULL OR PART TIME**

*Number of resumes per client:*

	PER DAY	FEE	TOTAL FEE	5 DAY WEEK	PER MONTH	PER YEAR
1	* 2	\$90	\$180	\$900	\$3,600	\$43,200
7	** 2	\$150	\$300	\$1,500	\$6,000	\$72,000
12	*** 2	\$200	\$400	\$2,000	\$8,000	\$96,000
15	**** 2	\$230	\$460	\$2,300	\$9,200	\$110,400
20	***** 2	\$280	\$560	\$2,800	\$11,200	\$134,000

\* Theoretical worst case scenario.

\*\*/\*\*\*\* Situation on a normal basis.

\*\*\*\*/\*\*\*\*\* Situation being achieved on a regular basis.

**Note:** Professional fee to compile a resume for every client is \$90 (which includes one Resume). Each additional resume a client takes is \$10 a resume, as is all ongoing resumes purchased at later dates. Therefore, the fee to do the work is \$90 and the resumes are \$10 each.

**Annexure B**

**INDEPENDENT ADVICE**

I \_\_\_\_\_ agree that:  
[Name of prospective purchaser]

- I have been verbally advised by Mr Keith P.W. Rolston (Mr Keith Rolston), Director and Secretary of Burnan Pty Ltd trading as Resume Service (Burnan Pty Ltd), of my right to obtain advice from an independent legal advisor, business advisor or accountant prior to entering into agreement with Resume Service for the supply of a résumé writing service Business Opportunity (the Business Opportunity).
- I have received advice from an independent legal advisor, business advisor or accountant.
- Neither Mr Keith Rolston or Burnan Pty Ltd has recommended to me that I use any particular independent legal advisor, business advisor or accountant and any advice I have received was from a person of my own choice.

OR

- I have declined to seek advice from an independent legal advisor, business advisor or accountant.
- Neither Mr Keith Rolston or Burnan Pty Ltd stated or did anything that implied that I should not seek independent advice or did not need to seek such advice.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

## **Annexure C**

### **COMPLIANCE PROGRAM UNDERTAKINGS AND ORDERS**

#### **Section 87B Undertaking**

The Trade Practices Compliance Program (Compliance Program) will cover sections 52 and 59 of the *Trade Practices Act 1974* (TPA), and will be in accordance with the requirements set out below.

#### **1. Training**

- 1.1. Within 2 months of this Undertaking coming into effect, and thereafter at least once a year for the period of the undertaking, Mr Keith Rolston will attend practical trade practices training focusing on sections 52 and 59 of the TPA administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
- 1.2. Burnan will use its best endeavours to provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 1.1 above to the ACCC within 14 days of completion of the training verifying that such training has occurred.

#### **2. Complaints handling**

- 2.1. Burnan will:
  - 2.1.1. develop procedures for recording, storing and responding to trade practices complaints within two months of this Undertaking coming into effect; and
  - 2.1.2. provide the ACCC with an outline of the complaint handling system developed within three months of the Undertaking coming into effect.

#### **3. Auditing**

- 3.1. Burnan will arrange for the Compliance Program to be independently audited on an annual basis for a period of 3 years after the Compliance Program is designed and implemented.

#### **4. Other**

- 4.1. If requested by the ACCC, Burnan will promptly provide, at its own expense, copies of any other documents or information in respect of matters which are the subject of the Compliance Program.