

**TRADE PRACTICES ACT 1974**

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B**

**BY**

**AUSTRALIAN REGIONAL EMPLOYMENT AGENCIES PTY LTD  
(A.C.N. 128 993 591)**

**AND**

**MR SHREYAS NARAYANA**

**PERSONS GIVING THIS UNDERTAKING**

1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by:
  - (a) Australian Regional Employment Agencies Pty Ltd (AREA) of 248 Flinders Street, Adelaide in the State of South Australia; and
  - (b) Mr Shreyas Narayana of [Suite 418, 530, Little Collins Street, Melbourne 3000] in the State of Victoria,  
under section 87B of the *Trade Practices Act 1974* (**the Act**).

**BACKGROUND**

2. AREA is incorporated under the *Corporations Act 2001* (Cth) and is registered in South Australia. AREA was incorporated on 20 December 2007.
3. AREA's core business is the supply of farm labour to regional centres throughout Australia, including fruit pickers and pruners. AREA also arranges work for international students wanting to work during holiday periods.
4. Mr Peter Thompson is the sole director/secretary of AREA.
5. Mr Thompson is also a director of Villiers Personnel Pty Ltd (A.C.N. 118 059 171) (**Villiers**). Villiers provides recruitment services for vineyard pruners and harvesters in the South Australian vineyards.
6. Mr Shreyas Narayana is employed and paid by Villiers but represents AREA as AREA's National Recruitment Manager. Mr Narayana's role involves recruiting backpackers and students on vacation for seasonal placements with clients in regional

areas. Mr Narayana is responsible for meeting with candidates, checking their visas and arranging their travel to the work destination.

7. In around December 2008, AREA entered into an arrangement with Zanok Technologies Pty Ltd (A.C.N. 129 995 023) (**Zanok**), an IT company that approached AREA to recruit IT graduates for a paid training course run by Zanok, with a job guaranteed at the end of the training course. Zanok were to pay AREA a fee for each IT graduate recruited by AREA for Zanok.
8. During January, February, March and April 2009, AREA placed advertisements on the websites [www.mycareer.com.au](http://www.mycareer.com.au), [www.seek.com.au](http://www.seek.com.au) and [www.gumtree.com.au](http://www.gumtree.com.au) advertising positions in the IT industry and guaranteeing employment upon completion of training (**the Advertisements**) on Zanok's behalf.
9. Mr Narayana prepared and placed the Advertisements from information provided to AREA by Zanok.
10. During December 2008 and January, February, March and April 2009, representatives of AREA, including Mr Narayana, arranged and conducted interviews with applicants for the positions advertised in the Advertisements, as well as other applicants referred by Mr Narayana, and friends and relatives referred by the applicants for the positions advertised in the Advertisements, (**the Applicants**) on Zanok's behalf.
11. Either during the interviews with Applicants or in prior or subsequent communications, representatives of AREA, including Mr Narayana, made the following representations to the Applicants:
  - (a) That successful Applicants would obtain guaranteed employment with Zanok at a specified minimum salary level upon completion of a three-month paid training course with Zanok for a cost of up to \$4,700;
  - (b) That some trainees had already completed the training and received job offers from Zanok; and
  - (c) That if trainees proved their abilities to Zanok, they may be hired by Zanok prior to the completion of the training course.
12. In around April 2009, AREA ceased its commercial relationship with Zanok because:
  - (a) Zanok had not paid AREA the recruitment fees owing to AREA;
  - (b) AREA had received complaints from trainees about the quality of the training course run by Zanok; and

- (c) AREA had received complaints from trainees that they had not received job offers from Zanak on completion of their training course, or they had received job offers but were not getting paid.
13. The ACCC commenced its investigation into Zanak and AREA in February 2009. The ACCC contacted AREA in early May 2009. AREA and Mr Narayana have cooperated with the ACCC's investigation.
14. The ACCC considers that AREA, via the representations made in the Advertisements, and the representations made by Mr Narayana and other representatives of AREA to the Applicants during the interviews and in prior or subsequent communications, contravened sections 52 and 53B of the Act as, inter alia, it represented that:
- (a) There were positions in the IT industry on offer when in fact the offer was for paid training for which applicants had to pay up to \$4,700;
  - (b) There were 'IT scholarships via paid training courses' on offer when such scholarships did not exist;
  - (c) There was a guarantee of employment at the end of training, when the workplace training agreement between Zanak and the trainee negated any guarantee in the event of a 'Global Economic Crisis' and when Zanak was not in a position to guarantee all graduates of the training course; and
  - (d) Zanak would pay trainees a specified minimum salary level upon completion of training, when Zanak was not in a position to guarantee to pay the specified minimum salary.
15. The ACCC considers that Mr Narayana, via representations made to the Applicants, contravened sections 52 and 53B of the Act as, inter alia, he represented that there was a guarantee of employment at the end of training, when the workplace training agreement between Zanak and the trainee negated any guarantee in the event of a 'Global Economic Crisis' and when Zanak was not in a position to guarantee all graduates of the training course.
16. AREA and Mr Narayana admits that this conduct contravened sections 52 and 53B of the Act.
17. To address the concerns of the ACCC, AREA and Mr Narayana have offered to give this Undertaking to the ACCC and the ACCC has agreed to accept the Undertaking under section 87B of the Act.

## **COMMENCEMENT OF UNDERTAKING**

18. This Undertaking comes into effect when:
- (a) the Undertaking is executed by AREA and Mr Narayana; and
  - (b) the ACCC accepts the Undertaking so executed.
- (“the commencement of this Undertaking”)**
19. Upon the commencement of this Undertaking, AREA and Mr Narayana undertake to assume the obligations set out in paragraphs 20 to 23 below.

## **UNDERTAKINGS**

### **Misleading conduct**

20. AREA undertakes that, for a period of 3 years from the commencement of this Undertaking, whether by itself, its directors, employees, agents or representatives, and whether by way of job advertisements placed by AREA or representations made to persons seeking employment, it will not engage in conduct that is likely to mislead persons seeking employment as to the availability, nature, or terms or conditions, of the employment.
21. In relation to job advertisements placed by AREA, AREA undertakes that all advertisements will be:
- (a) worded so that they do not mislead persons seeking employment; and
  - (b) reviewed by the General Manager of AREA prior to being placed to ensure compliance with the Act.
22. In relation to representations made to persons seeking employment, AREA and Mr Narayana undertake to ensure that all representations made are accurate in describing the nature and conditions of the employment offered.

### **Trade Practices Compliance Program**

23. AREA undertakes that it will:
- (a) within three (3) months of the commencement of this Undertaking, establish and implement a Trade Practices Compliance Program in accordance with the

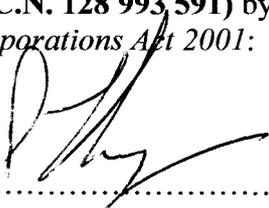
requirements set out in **Annexure A** to this Undertaking for the employees or other persons involved in AREA's business, being a program designed to:

- i. minimise AREA's risk of future breaches of Part V of the Act; and
  - ii. ensure AREA is aware of the responsibilities and obligations in relation to the requirements of Part V of the Act, in particular sections 52 and 53B of the Act;
- (b) maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years from the commencement of this Undertaking; and
- (c) provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure A.
24. Mr Narayana further undertakes to attend such trade practices training as AREA may arrange for him in accordance with the Trade Practices Compliance Program.\

#### **ACKNOWLEDGEMENTS**

25. AREA and Mr Narayana acknowledge that:
- (a) the ACCC will make this Undertaking available for public inspection;
  - (b) the ACCC will from time to time publicly refer to this Undertaking;
  - (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**EXECUTED** by **AUSTRALIAN REGIONAL EMPLOYMENT AGENCIES PTY LTD** (A.C.N. 128 993 591) by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*:



.....  
Sole Director/Secretary

PETER THOMPSON  
.....

Print Name

This 23<sup>rd</sup> day of July 2009

**SIGNED** by **SHREYAS NARAYANA** in the presence of:



.....  
Signature of Shreyas Narayana



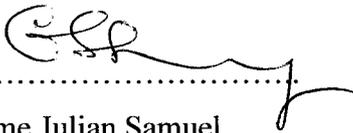
.....  
Signature of witness

*ALAN LANE*  
.....

Name of witness

This *31* day of *JULY* 2009

**ACCEPTED** by the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION** pursuant to section 87B of the *Trade Practices Act 1974*



.....  
Graeme Julian Samuel

Chairman

Australian Competition and Consumer Commission

This *12* day of *August* 2009

## **ANNEXURE A**

### **TRADE PRACTICES COMPLIANCE PROGRAM**

Australian Regional Employment Agencies Pty Ltd (A.C.N. 128 993 591) (**AREA**) will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

#### **Complaints handling**

1. AREA will ensure that the Compliance Program includes a complaints handling system capable of identifying, recording, storing and responding to trade practices complaints.
2. The General Manager of AREA will be responsible for supervising the complaints handling system.

#### **Training**

3. AREA will ensure that the Compliance Program provides for practical trade practices training for all employees, representatives and agents of AREA whose duties could result in them being concerned with conduct that may contravene Part V of the Act. All employees, representatives and agents of AREA must attend such training within 3 months of the commencement of this Undertaking and thereafter at least once a year for the period of this Undertaking.
4. The training program must be designed to ensure awareness by the employees of AREA of AREA's responsibilities and obligations in relation to Part V of the Act, in particular sections 52 and 53B of the Act.
5. AREA must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
6. AREA must ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new employees of AREA whose duties could result in them being concerned with conduct that may contravene Part V of the Act.

## **Documents**

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