

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth)

by Bowra & O'Dea Pty Ltd (ACN 008 682 326)

Person giving the Undertaking

1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Bowra & O'Dea Pty Ltd (ACN 008 682 326) (**Bowra & O'Dea**), for the purposes of section 87B of the *Competition and Consumer Act 2010* (CCA).

Background

2. Bowra & O'Dea operates 12 funeral homes in and around Perth, providing cremation and funeral services and selling caskets, urns and coffins.

ACCC concerns

Price Representations

3. Between at least 10 September 2020 and 14 December 2020, Bowra & O'Dea, in trade or commerce, in connection with the supply, possible supply and the promotion of the supply of its funeral and cremation services (**Services**), published (or caused to be published) on its website at <https://bowraodea.com.au/funeral-services/> (**Website**) prices for those Services.
4. In particular, during the above period Bowra & O'Dea made the following statements on its Website:
 - a) for its 'Premium Single Service': 'Our Professional Service Fee* is \$5,280', and in smaller text below, 'Excludes additional costs*';
 - b) for its 'Premium Dual Service': 'Our Professional Service Fee* is \$5,940', and in smaller text below, 'Excludes additional costs*';
 - c) for its 'Essential Service': 'Our Essential Service fee* is \$3,950...', and in smaller text below, 'Excludes additional costs*'; and
 - d) for its 'Essential Goodbye Service': 'Our Essential Goodbye Service fee* is \$3,840...', and in smaller text below, 'Excludes additional costs*';(together, the **Price Representations**).
5. Each of the Price Representations referred to in paragraph 4 above with respect to the amount, being the price for the supply of the Service, if paid, constituted only a part of the price payable for the supply of the respective Service as it did not include certain costs which were unavoidable, including cremation permit fees, cemetery fees and the price for a coffin or casket. Further, Bowra & O'Dea did not specify, in a prominent way and as a single figure, or at all, the single price for each of those Services which included all unavoidable costs.
6. By reason of the matters referred to in paragraphs 3 to 5 above, the ACCC considers that Bowra & O'Dea has contravened section 48(1) of the Australian Consumer Law (ACL), contained in Schedule 2 to the CCA.

Unfair Contract Terms

7. Since at least 19 October 2020 to 27 October 2021, Bowra & O'Dea has entered into the following standard form contracts for the supply of funeral and cremation services to consumers:

- a) the Application for Credit & Contract for Payment of Funeral Expenses (the **Credit Contract**), which was in use from at least 19 October 2020 to 3 August 2021; and
- b) the Memorandum and Conditions contract which contains 'Part A – Memorandum of Funeral Costs', 'Part B - General Conditions and Information', and 'Part C Your Contract with Bowra & O'Dea Pty' (the **Memorandum Contract**), which was in use since at least 4 August 2021 to at least 4 November 2021,

collectively, the **Contracts**.

8. The Contracts contained terms that permitted Bowra & O'Dea to:

- a) vary the price payable under the contract without seeking the consumer's consent to any variation to the price payable, and with no right for the consumer to terminate the contract in light of any variation to the price payable (Credit Contract clause 3/ Memorandum Contract clause 1b); and
- b) charge consumers who did not pay invoices on time an interest rate of 10% per annum on the unpaid amount (Credit Contract clause 6) as well as a late payment fee of \$352.00 (Credit Contract clause 5),

collectively, the **Terms of Concern**.

9. The ACCC considers that the Terms of Concern are unfair contract terms within the meaning of sections 23 and 24 of the ACL.

Admissions, Acknowledgements and Resolution

10. In response to the ACCC's concerns, Bowra & O'Dea:

- a) admits that by making the Price Representations it has contravened section 48(1) of the ACL;
- b) acknowledges that the Terms of Concern are unfair within the meaning of sections 23 and 24 of the ACL;
- c) amended its Website;
- d) amended the terms of its consumer agreements; and
- e) offered this undertaking to the ACCC to resolve the ACCC's concerns.

11. Bowra & O'Dea has also agreed to resolve the ACCC's concern in relation to the Price Representations by payment of two infringement notices, with a penalty of \$13,320 for each infringement notice, issued under section 134A of the CCA for two alleged contraventions of section 48(1) of the ACL.

Commencement of the Undertaking

12. This Undertaking comes into effect when:

- a) this Undertaking is executed by Bowra & O'Dea; and
- b) this Undertaking so executed is accepted by the ACCC (the **Commencement Date**).

13. Upon the Commencement Date, Bowra & O'Dea assumes the obligations set out in paragraphs 15 to 24 of this Undertaking for the purposes of section 87B of the CCA.

14. This Undertaking remains in effect for three (3) years from the Commencement Date.

Undertakings

Price Representations

15. On the Website and in any other media, including brochures and invoices, Bowra & O'Dea will specify, in a prominent way and as a single figure, the price for the supply of each of its funeral and cremation services, being a price which includes all of the quantifiable amounts that Bowra & O'Dea will charge for those services, including, where applicable:

- a) taxes and other statutory charges, such as GST;
- b) unavoidable costs that Bowra & O'Dea will pass on to consumers, such as cremation fees; and
- c) the price for goods to be supplied as part of a package of goods and services, such as a coffin or urn.

Where charges are not quantifiable because they depend on consumer choice, Bowra & O'Dea will clearly inform consumers of that fact.

Current contracts

16. Bowra & O'Dea will not enforce or rely on the Terms of Concern for any Contract entered into with a consumer after 19 October 2020 that is still in force.

Future contracts

17. Bowra & O'Dea will not include the Terms of Concern, or any term that has the same effect as the Terms of Concern (including charging consumers who did not pay invoices on time an interest rate on the unpaid amount in addition to a late payment fee), in future contracts with consumers.

Compliance Program

18. Bowra & O'Dea will, within three months of the Commencement Date and at its own expense:

- a) establish and implement an ACL compliance program (**Compliance Program**) in accordance with the requirements set out in **Annexure A** to this Undertaking; and

- b) maintain and continue to implement the Compliance Program for a period of 3 years from the Commencement Date.

Bowra & O'Dea's Annual Self Compliance report

19. On an annual basis for the duration of this Undertaking, Bowra & O'Dea will provide the ACCC with a report of its compliance with this Undertaking, which includes:

- a) a description of the steps taken by Bowra & O'Dea to comply with this Undertaking; and
- b) if Bowra & O'Dea is aware of any non-compliance by it with this Undertaking, an identification and description of the non-compliance during that period and the steps taken by Bowra & O'Dea to address those issues of non-compliance,

(Annual Compliance Statement).

20. Bowra & O'Dea will provide an Annual Compliance Statement to the ACCC no later than 2 months from each anniversary of the Commencement Date. The report will cover the period from 1 January to 31 December in each year of the term of this Undertaking (or part thereof where this Undertaking commences or expires, is withdrawn or revoked during that period) immediately prior to the date on which the Annual Compliance Statement is due.

Notification of key dates and ACCC requests for information

21. The ACCC may direct Bowra & O'Dea in respect of its compliance with this Undertaking to, and Bowra & O'Dea will:

- a) furnish information to the ACCC in the time and in the form requested by the ACCC;
- b) produce documents and materials to the ACCC within Bowra & O'Dea's custody, power or control in the time and in the form requested by the ACCC; and/or
- c) attend the ACCC at a time and a place appointed by the ACCC to answer any questions the ACCC may have.

22. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC pursuant to paragraph 24 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.

Acknowledgments

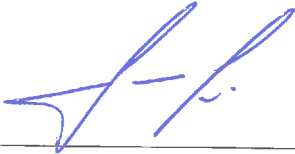



23. Bowra & O'Dea acknowledges the ACCC may:

- a) make this Undertaking publicly available, including by publishing it on the ACCC's public register of section 87B undertakings on its website; and
- b) from time to time, make public reference to this Undertaking, including in news media statements and in ACCC publications.

24. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the ACL and CCA for penalties or other remedies in the event Bowra & O'Dea does not fully implement and/or perform its obligations under this Undertaking or in relation to any other event.

Executed as an Undertaking

Executed by Bowra & O'Dea Pty Ltd (ACN 008 682 326) pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of a director/company secretary (delete as appropriate, or entire column if sole director company)
	
Name of director (print)	Name of director/company secretary (print)
Date 16.12.2021	Date 16/12/2021

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

5 January 2022

Date

and signed on behalf of the Commission:

The signature is handwritten in blue ink and appears to read 'DSS' followed by 'ims' in a smaller font.

Chair

Date

5 January 2022

ANNEXURE A

COMPETITION AND CONSUMER COMPLIANCE PROGRAM

Bowra & O'Dea will establish a Competition and Consumer Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Training

1. Within 3 months of this Undertaking coming into effect, and thereafter at least once a year for 3 years, the Director of Bowra & O'Dea will attend practical training focusing on Part 2-1 and Part 2-3 of the Australian Consumer Law, contained in Schedule 2 to the *Competition and Consumer Act 2010* (the **CCA**).
2. Bowra & O'Dea will ensure that the training referred to in paragraph 1 above is administered by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law (**the Trainer**).

Complaints handling

3. Within 3 months of this Undertaking coming into effect, Bowra & O'Dea will develop procedures for recording, storing and responding to consumer law complaints.

Provision of Compliance Program documents to the ACCC

4. Bowra & O'Dea will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than 3 years.
5. If requested by the ACCC during the period of the Undertaking, Bowra & O'Dea will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:
 - 5.1.1. a written statement or certificate from the Trainer who conducts the training referred to in paragraph 1, verifying that such training has occurred; and
 - 5.1.2. an outline of the complaints handling system referred to in paragraph 3.