

# Undertaking to the Australian Competition and Consumer Commission

Given under s 87B of the *Competition and Consumer Act 2010* (Cth) by ANZ Roofing Pty Ltd ACN 603 361 235 and Mark Lee Burtenshaw.

## Person giving the Undertaking

1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by:

1.1. ANZ Roofing Pty Ltd ACN 603 361 235 (ANZ Roofing); and

1.2. Mark Lee Burtenshaw (Burtenshaw),

for the purposes of s 87B of the *Competition and Consumer Act 2010* (CCA).

## Background

2. ANZ Roofing provides roofing services in the greater Sydney area. ANZ Roofing has two directors, including Burtenshaw.

3. In or around 2016, those directors, including Burtenshaw, created the public Facebook page titled [REDACTED] accessible at the URL [REDACTED]

[REDACTED] Since that time, those directors, including Burtenshaw, have been administrators of [REDACTED] with the ability to remove posts and add members to, or remove members from, [REDACTED]

4. Burtenshaw is also a member of the public Facebook page titled [REDACTED] accessible at the URL [REDACTED]

5. [REDACTED] has hundreds of members and [REDACTED] has thousands of members. At least some of the members of [REDACTED] and [REDACTED] provide roofing services in the greater Sydney area (Roofers), and compete with ANZ Roofing.

## Competition and Consumer Act 2010 (Cth) (CCA)

6. The CCA prohibits, among other things, cartel conduct and anti-competitive concerted practices.

6.1. A corporation is prohibited from making a contract or arrangement, or arriving at an understanding, with an actual or potential competitor that contains a 'cartel provision' (s 45AJ of the CCA).

6.2. The definition of a 'cartel provision' includes a provision that has the effect, likely effect, or purpose of fixing, controlling, or maintaining the price of a good or service that is supplied, or likely to be supplied, by at least one party to the contract, arrangement, or understanding (s 45AD of the CCA).

6.3. A corporation is prohibited from engaging in a concerted practice with another person if that concerted practice has the purpose, effect, or likely effect of substantially lessening competition (s 45(1)(c) of the CCA).

6.4. A 'concerted practice' is any form of cooperation between two or more persons, or conduct that would be likely to establish such cooperation. The ACCC considers a business to be particularly at risk of engaging in an unlawful concerted practice if it replaces or reduces competitive, independent decision making by cooperating with its competitors.

- 6.5. Section 76 of the CCA provides that the Court may order a person to pay a pecuniary penalty if it is satisfied that the person has:

6.5.1. attempted; and/or

6.5.2. induced, or attempted to induce, others (whether through threats, promises, or otherwise),

to contravene a provision in Part IV of the CCA, including sections 45AJ and/or 45(1)(c).

### Conduct of concern

#### Conduct

7. On or about 20 December 2018, Burtenshaw:

- 7.1. posted to [REDACTED] a photograph of two large hail stones, with the statement *"I think this latest storm is the perfect opportunity for the roofers of Sydney to increase pricing across the board as a standard that doesn't decrease!"* ([REDACTED] Post);
- 7.2. replied to a comment on the [REDACTED] Post by a [REDACTED] member with the comment, *"[REDACTED] Member] if there is ever a time to increase an set the standard it's times like this... nothing like a natural disaster the day we shut down! It's like a United strike! Haha"*;
- 7.3. replied to a comment by a [REDACTED] member on the [REDACTED] Post stating he had been asked to remove, supply and install for \$55 per square metre, with the comment, *"Funny I thought \$55 is per LM what we should be quoting for installation of quad gutter only? Starting from!"*;
- 7.4. 'liked' a comment by a [REDACTED] member that said, *"Let's all agree that we start from \$65 and go up"* (\$65 Comment);
- 7.5. 'liked' a comment by a [REDACTED] member, in response to the \$65 Comment, *"[REDACTED] Member] even that's too cheap"*; and
- 7.6. 'liked' a comment by a [REDACTED] member, which said *"If it makes money it makes sense"*.

8. There are Roofers in the greater Sydney area, who 'liked' the [REDACTED] Post or the comment at paragraph 7.3, or have informed the ACCC that they understood the [REDACTED] Post to be a suggestion to raise their prices.

#### Conduct

9. On or about 20 December 2018, Burtenshaw:

- 9.1. re-posted or "shared" the [REDACTED] Post to [REDACTED] ([REDACTED] Post);
- 9.2. posted a GIF of cascading money along with the comment, *"only thing raining today was money!! Haha"* in answer to a comment by a [REDACTED] member on the [REDACTED] Post; and
- 9.3. posted the comment *"\$120m2 tin off tin on should be our starting point!"* in reply to a comment by a [REDACTED] member on the [REDACTED] Post who said *"70\$ m2 tin off tin on"*.

10. There are Roofers in the greater Sydney area, who 'liked' the [REDACTED] Post or the comment at paragraph 9.3.

## **Admissions and resolution**

11. ANZ Roofing and Burtenshaw admit that Burtenshaw's conduct, as set out at **paragraphs 7 - 9**, was undertaken in his capacity as a director of ANZ Roofing.
12. The ACCC advises and ANZ Roofing and Burtenshaw accept that other roofers who were members of [REDACTED] or [REDACTED] may have interpreted the:
  - 12.1. [REDACTED] Post, either in isolation or when read in the context of the other posts set out at **paragraph 7**, above; and/or
  - 12.2. [REDACTED] Post, either in isolation or when read in the context of the other posts set out at **paragraph 9**, above,as one or more attempts to make a contract or arrangement, or arrive at an understanding, to increase, fix, maintain, or control prices across certain roofing services in the greater Sydney area (or an attempt to induce the same).
13. ANZ Roofing and Burtenshaw admit that the conduct outlined above at **paragraphs 7 and 9**, likely constituted an attempt to contravene, or an attempt to induce a contravention of, s 45AJ of the CCA through the fixing, maintaining or controlling of prices for the supply of roofing services in the greater Sydney area.
14. ANZ Roofing and Burtenshaw acknowledge that in some circumstances, conduct of the kind set out in **paragraphs 7 and 9** could raise concerns under section 45(1)(c), which prohibits a corporation from engaging with one or more persons in a concerted practice that has the purpose, effect or likely effect, of substantially lessening competition.
15. ANZ Roofing and Burtenshaw agree to resolve the ACCC's concerns in relation to these matters by providing this Undertaking.
16. The ACCC notes that in November 2019, Burtenshaw removed both the [REDACTED] Post and the [REDACTED] Post.

## **Commencement of this Undertaking**

17. This Undertaking comes into effect when:
  - 17.1. the Undertaking is executed by ANZ Roofing and Burtenshaw; and
  - 17.2. the ACCC accepts the Undertaking so executed (**Commencement Date**).
18. Upon the commencement of this Undertaking:
  - 18.1. ANZ Roofing undertakes to assume the obligations set out in **paragraph 19**; and
  - 18.2. Burtenshaw undertakes to assume the obligations set out in **paragraphs 20 and 21**,for the purpose of section 87B of the CCA.

## **Undertaking**

19. ANZ Roofing undertakes:
  - 19.1. For a period of three years from the Commencement Date, not to make any communication or engage in any conduct, whether on social media or otherwise, that would amount to a contravention, an attempted contravention or an attempt to induce a contravention, of the CCA, in

particular, ss 45(1)(c) or 45AJ of the CCA.

- 19.2. Within two business days from the Commencement Date, to have Burtenshaw make a post to [REDACTED] with the following words and then mark that post as an announcement for a period of a further 90 days after that day:

*Attention all [REDACTED]: The Australian Competition and Consumer Commission (ACCC) is a federal regulator that enforces Australia's competition laws (the Competition and Consumer Act 2010). The ACCC has recently investigated posts that were made on this page that may have involved attempts to fix prices and share commercially sensitive pricing information between our members.*

*Where roofers discuss information about prices or tenders for jobs, it removes competition between them and risks breaching the competition laws.*

*Prohibited conduct could include two or more [REDACTED]:*

- *agreeing (or trying to agree) on a minimum price to quote jobs*
- *dividing up particular areas of Sydney that they will service*
- *publishing rates or pricing information in a forum such as this page so that other roofers can get a sense of what their competitors are charging.*

*If anyone would like to report any potentially anti-competitive conduct to the ACCC, they should call the ACCC on 1300 302 502.*

20. Burtenshaw undertakes, for a period of three years from the Commencement Date, not to make any communication or engage in any conduct, whether on social media or otherwise, that would amount to a contravention, an attempted contravention or an attempt to induce a contravention, of the CCA, and in particular, ss 45(1)(c) or 45AJ of the CCA.
21. Burtenshaw undertakes, within three months of the Commencement Date:
- 21.1. to complete practical competition and consumer law training from a suitably qualified legal practitioner, focusing in particular on Pt 4, Div 1 of the CCA, and s 45(1)(c) of the CCA; and
  - 21.2. to provide the ACCC with written confirmation/certification from the suitably qualified legal practitioner that evidences completion of the training described in paragraph 21.1 above.

## **Acknowledgments**

22. ANZ Roofing acknowledges that:

- 22.1. the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- 22.2. the ACCC will, from time to time, make public reference to this Undertaking including in news, media statements and in ACCC publications; and
- 22.3. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.



## Executed as an Undertaking

Executed by ANZ Roofing Pty Ltd ACN 603 361 235 pursuant to section 127(1) of the *Corporations Act 2001* by



Signature of Nathan Houston, director

Date

4/12/19

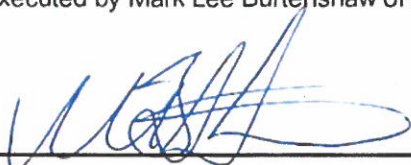


Signature of Mark Lee Burtenshaw, director

Date

4/12/19

Executed by Mark Lee Burtenshaw of 84 Helmsman Boulevard, Saint Huberts Island, NSW 2257:



Signature

4/12/19

Date

Accepted by the Australian Competition and Consumer Commission pursuant to s 87B of the *Competition and Consumer Act 2010* on:

9/12/19

Date

and signed on behalf of the Commission



Chair

9/12/19

Date