



**UNDERTAKING**  
*Australian Consumer Law (SA)*  
Section 218

Undertaking to the Commissioner for Consumer Affairs given for the purposes of section 218 of the *Australian Consumer Law (SA)* by:

**Mr David Stuart Cook (ABN 43 135 486 072)**

**PERSONS GIVING THIS UNDERTAKING**

This Undertaking is given to the Commissioner for Consumer Affairs ("the Commissioner") by Mr David Stuart Cook trading as 'Elders Real Estate Barossa' (ABN 43 135 486 072) for the purposes of section 218 of the *Australian Consumer Law (SA)*.

**BACKGROUND**

1. Mr David Stuart Cook (ABN 43 135 486 072) ("Mr Cook") is a natural person and sole trader.
2. Mr Cook is a licensed Land Agent providing sales and rental services for commercial and residential properties in South Australia.
3. Section 30(1)(e) of the *Australian Consumer Law (SA)* requires that a person must not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion by any means of the sale or grant of an interest in land, make a false or misleading representation concerning the characteristics of the land.

**CONDUCT OF CONCERN**

4. Between December 2014 and May 2015, Mr Cook, then trading as 'Ray White Gawler and Barossa Valley', advertised for sale 82 Slaughterhouse Road, SPRING FARM SA 5453. Mr Cook was also the vendor of the property. The property was initially advertised for sale at \$750,000.
5. The property was described by Mr Cook in his capacity as Land Agent, within the advertisement for sale, as having a land size of 8 acres.
6. On 15 May 2015, Mr John O'Brien and Mrs Lucinda O'Brien purchased the property for \$570,000, after the advertised price had been reduced to \$585,000 during April 2015.
7. After purchase, it was discovered by Mr and Ms O'Brien that the land size was 5.2 acres, not 8 as advertised by Mr Cook.
8. By advertising the property as having land size of 8 acres when it was 5.2 acres Mr Cook, in connection with the possible sale or grant of an interest in land, made a false or misleading representation concerning the characteristics of that land in that:

- 8.1. The agent did not have reasonable grounds for making the representation as Mr Cook, being both the vendor and the Land Agent for the advertisement and sale, knew or should have known that the land size was not 8 acres, but in fact 5.2 acres.

#### **CONTRAVENTIONS**

9. The Commissioner considers and Mr Cook acknowledges that in respect of the conduct outlined at paragraphs 4 to 8 above, he has contravened section 30(1)(e) of the *Australian Consumer Law (SA)* by making false or misleading representations concerning the characteristics of the land.

#### **UNDERTAKING BY MR DAVID STUART COOK, FOR THE PURPOSES OF SECTION 218 OF THE AUSTRALIAN CONSUMER LAW (SA).**

10. In response to the concerns raised by Consumer and Business Services ("CBS") on behalf of the Commissioner, Mr Cook cooperated fully with the investigation and provides an Undertaking to the Commissioner that:

- 10.1. Mr Cook will not make false or misleading representations concerning characteristics of land in compliance with section 30(1)(e) of the *Australian Consumer Law (SA)*.

#### **COMMENCEMENT OF UNDERTAKING**

11. This Undertaking comes into effect when:

- 18.1 The Undertaking is executed by Mr Cook; and
  - 18.2 The Commissioner accepts the Undertaking so executed.

#### **ACKNOWLEDGMENTS**

12. Mr Cook acknowledges that:

- 19.1 It is an offence to breach an Undertaking, as set out in section 218 of the *Australian Consumer Law (SA)*;
  - 19.2 CBS will make this Undertaking publicly available including by publishing it on CBS' public register of Undertakings on its website;
  - 19.3 CBS will, from time to time, make public reference to the Undertaking including in news media statements and in CBS publications;
  - 19.4 This Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
  - 19.5 This Undertaking may be produced to any Court in respect of any proceedings alleging any future contraventions of the *Australian Consumer Law (SA)*.

EXECUTED BY MR DAVID STUART COOK

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**Signature of Witness**

Witness name: N. JEANES

Accepted by the Commissioner for Consumer Affairs (SA) pursuant to section 218 of *Australian Consumer Law (SA)*.

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**Commissioner for Consumer Affairs (SA)**

Date: 18/7/19