

AUSTRALIAN CONSUMER LAW (NSW)

**UNDERTAKING TO THE ASSISTANT COMMISSIONER FOR
FAIR TRADING GIVEN BY**

James Kaufmann

**FOR THE PURPOSES OF
SECTION 218 OF THE AUSTRALIAN CONSUMER LAW (NSW)**

PERSON GIVING THIS UNDERTAKING

1. This Undertaking is given to the Assistant Commissioner, Compliance and Enforcement, NSW Fair Trading, Department of Finance, Services and Innovation ("**Assistant Commissioner**") by:

Mr James Frederick Kaufmann ("**Mr Kaufmann**") of [REDACTED]
[REDACTED] born [REDACTED] 1952, in his personal capacity.

INTERPRETATION AND DEFINITION

2. In this undertaking, unless the context otherwise indicates:
 - 2.1. '**ACL**' means the *Australian Consumer Law (NSW)*
 - 2.2. '**Consumer**' has the same meaning as section 3 of the ACL.
 - 2.3. '**Services**' have the same meaning as section 2 of the ACL.
 - 2.4. '**Supply**' has the same meaning as section 2 of the ACL.

BACKGROUND

3. The Commissioner for Fair Trading ("**the Commissioner**"), NSW Fair Trading, ("**NSWFT**") performs functions pursuant to section 9 of the *Fair Trading Act 1987* ("**the Act**"), including the receipt and investigation of complaints and securing compliance with the provisions of the Act and any other legislation administered by the Minister for Fair Trading ("**Minister**").
4. The Assistant Commissioner is a delegate of the Commissioner.
5. The Minister, the Commissioner, the Assistant Commissioner and NSWFT are responsible for the enforcement of the following legislation in NSW:
 - 5.1. The Act;
 - 5.2. *The Motor Dealers Act 1974 (NSW)* ("**MD Act**");
 - 5.3. *The Motor Vehicles Repair Act 1980 (NSW)* ("**MVR Act**");

5.4. *The Motor Dealers and Repairers Act 2013 (NSW)* ("**MDR Act**")

5.5. The ACL.

6. Australian RV Specialists Pty Ltd, ACN 107 364 394 ("**ARVS**") is an Australian corporation first registered on 11 December 2003 pursuant to the *Corporations Act 2001 (Cth)* ("**Corporations Act**"). Between 11 December 2003 and 1 August 2009 Mr Kaufmann was a joint director of ARVS. On 18 May 2009, ARVS changed its name to Australian RV Enterprises Pty Ltd, ACN 107 364 394 and remains registered as a corporation.
7. On 10 June 2008 Mr Kaufmann was issued with a motor dealer licence number MD21011 pursuant to the MD Act. This licence was surrendered by Mr Kaufmann on 9 October 2009.
8. Play Mor Pty Ltd, ACN 133 603 899 ("**Play Mor**") is an Australian corporation first registered pursuant to the Corporations Act on 7 October 2008. Between 7 October 2008 and 15 September 2009 Mr Kaufmann was a joint director of Play Mor. On 18 January 2013 Mr Kaufmann was reappointed as a sole director of Play Mor and remained its sole director until the de-registration of Play Mor on 11 April 2014, after Play Mor was placed into voluntary liquidation on 5 June 2013.
9. Play Mor was an importer and Australia wide supplier of trailers manufactured in the United States of America ("**5th Wheeler Trailers**") and was approved by the Commonwealth Department of Infrastructure and Regional Development ("**DIRD**") to affix a compliance plate to 5th Wheeler Trailers over 4.5 tonnes indicating that the 5th Wheeler Trailers complied with applicable Australian Design Rules and Standards as approved from time to time by DIRD ("**Compliance plate**"). The approval number for the compliance plate is (IPA) 33613 for 5th Wheeler Trailers over 4.5 tonnes.
10. Newcastle RVS Pty Ltd, ACN 139 800 114 ("**RVS**") is an Australian corporation first registered pursuant to the Corporations Act on 2 October 2009. Mr Kaufmann was appointed as the sole director of RVS on 4

February 2010 and remained a sole director until the de-registration of RVS on 11 April 2014 after RVS was placed into voluntary liquidation on 5 June 2013.

11. Between 9 October 2009 and 6 November 2012, RVS held motor dealer licence number MD027816 issued pursuant to the MD Act.
12. Newcastle RV Specialists Pty Ltd ACN 160 027 743 ("**Newcastle RV**") is an Australian corporation first registered pursuant to the Corporations Act on 22 August 2012. On 22 August 2012 Mr Kaufmann was appointed a joint director of Newcastle RV until 18 January 2013. On 18 January 2013 Mr Kaufmann became and remains the sole director of Newcastle RV.
13. On 30 June 2013 Newcastle RV changed its name to RV Specialists Pty Ltd ("**RV Specialists**"). On 6 November 2012 Newcastle RV was issued with motor dealer licence number MD043062 pursuant to the MD Act. On 16 December 2013 the licence organisation name was changed from Newcastle RV to RV Specialists. This licence remains current.
14. Play Mor Australia Pty Ltd, ACN 160 016 553 ("**PMA**") is an Australian corporation first registered pursuant to the Corporations Act on 22 August 2012. On 23 January 2013, PMA changed its name to Summer Life RV Pty Ltd ("**Summer Life**") and remains a registered corporation. Mr Kauffmann was appointed a sole director of PMA and remains sole director of Summer Life.
15. Neither Mr Kauffman nor any of the corporations specified at paragraphs 6-14 above, have ever held or presently hold an authority issued under the MVR Act or MDR Act authorising its holder of that authority to undertake motor vehicle repairs or modifications.
16. Between 7 October 2008 and 12 November 2012, Play Mor and RVS either jointly or singly imported, marketed, and supplied approximately 111 5th Wheeler Trailers to consumers across Australia. Each of the 5th Wheeler

Trailers supplied were affixed with the Compliance plate (IPA 33613) by Play Mor and are identified by a vehicle identification number commencing "1JW100". Of the 111 5th Wheeler Trailers supplied, 47 of those were over 4.5 tonnes and the remaining trailers were under 4.5 tonnes. The 47 5th Wheeler Trailers over 4.5 tonnes were subject to a recall published by the Australian Competition and Consumer Commission PRA number 2014/14287 published on 1 September 2014.

17. Prior to supplying 5th Wheeler Trailers to consumers nationally, Play Mor and RVS either jointly or singly, under the direction of Mr Kaufmann:

- 17.1. performed repairs and/or modifications to the trailers in an attempt to have the trailers comply with applicable Australian Design Rules;
- 17.2. fitted the Compliance plate to the trailers, the effect of which was to represent to consumers that the trailers complied with applicable Australian Design Rules;
- 17.3. advertised, marketed and supplied the trailers to consumers nationally, and in so doing represented to consumers that the trailers were fully compliant with Australian Design Rules; and
- 17.4. represented to consumers, by advertising, marketing and supply that the trailers were safe to operate on Australian roads.

18. In addition, Play Mor and RVS either jointly or singly, under the direction of Mr Kaufmann repaired and modified at least two motor vehicles used to tow 5th Wheeler trailers, in particular the following vehicles:

- 18.1. 2011 Iveco 65C18, Vehicle Identification Number [REDACTED] NSW registration number [REDACTED] and registered to [REDACTED], by fitting a Hijacker fifth wheel assembly turn table, tool boxes, Cummings 5KVA diesel generator and service brake modifications; and

18.2. 2011 Iveco 65C Vehicle Identification Number

██████████, QLD registration number ██████████ and registered to ██████████ by fitting a Hijacker fifth wheel assembly turn table and tool box to the vehicle owned by ██████████

FAILURE TO COMPLY WITH APPLICABLE AUSTRALIAN DESIGN RULES

19. In 2013 NSWFT together with the Roads and Maritime Services of NSW ("RMS") and DIRD investigated a number of complaints in relation to 5th Wheeler Trailers supplied by Play Mor and RVS. As a result of those investigations it was determined that all 5th Wheeler Trailers over 4.5 tonnes aggregate trailer mass supplied by Play Mor and RVS did not comply with Australian Design Rules, generally in the following areas:

- 19.1. Fitment of non-approved lamps, including their locations on the vehicles;
- 19.2. Rear semi-trailer bumper bar;
- 19.3. King pin and skid plate; and
- 19.4. Braking operation.

20. **MISLEADING, DECEPTIVE AND UNLAWFUL CONDUCT**

21. It is alleged but not admitted by Mr Kaufmann, that Play Mor, RVS and Mr Kaufmann,

- 21.1. Contravened section 18 of the ACL by representing to consumers through advertising, marketing and supply, that 5th Wheeler Trailers over 4.5 tonnes aggregate trailer mass supplied by Play Mor and/or RVS fully complied with applicable Australian Design Rules and were safe for operation on Australian roads, in circumstances where Play Mor, RVS and Mr Kaufmann knew or ought to have known the trailers did not comply with applicable

Australian Design Rules and were not safe to operate on Australian roads;

21.2. Contravened section 18 of the ACL by representing to at least 2 consumers, specifically [REDACTED] and [REDACTED] that repairs and modifications made to their motor vehicles fully complied with applicable Australian Designs Rules and the vehicles were safe for operation as towing vehicles for 5th Wheeler Trailers on Australian roads in circumstances where Play Mor, RVS and Mr Kaufmann knew or ought to have known both the vehicles did not comply with applicable Australian Design Rules and were not safe to operate on Australian roads;

OBLIGATIONS UNDER THE UNDERTAKINGS
CORRECTIVE COMPONENT

22. Within 14 days from the date of acceptance of this Undertaking, Mr Kaufmann undertakes for the purposes of section 218 of the ACL to:

22.1. Identify all 5th Wheeler Trailers supplied to consumers by Play Mor and RVS between 22 August 2008 and 27 March 2013 and provide a list in writing to NSWFT with the name and address of each consumer;

22.2. Write to each consumer identified in 22.1 above and notify each consumer that:

1.22.2..1. In the case of 5th Wheeler Trailers over 4.5 tonnes aggregate trailer mass, those trailers do not comply with applicable Australian Design Rules and until such time as the trailer has been inspected for compliance with Australian Design Rules and where applicable, rectified to comply with those rules, may only be operated on Australian roads if registered and the operator is satisfied that the vehicle is roadworthy and free from defects that would prevent its safe operation on Australian roads;

1.22.2..2. Invite each affected consumer to contact Mr Kaufmann on 02 4954 6652 to arrange for the inspection of their 5th Wheeler Trailer by Mr Kaufmann at 42 Mitchell Road Cardiff NSW 2285, and if required following such inspection, rectification by Mr Kaufmann of any non-compliance with applicable Australian Design Rules so that each of the trailers so inspected and rectified do comply with applicable Australian Design Rules. Where circumstances make it reasonably impracticable for the consumer to have the 5th Wheeler Trailer inspected and rectified by Mr Kaufmann, Mr Kaufmann must invite each affected consumer to arrange for the inspection of the 5th Wheeler Trailer by a person or organisation authorised by legislation to conduct inspections of motor vehicles and trailers in the relevant State in which the trailer is registered or located, and, as each case may require, the rectification of any non compliance with applicable Australian Design Rules so that each of the trailers so inspected and rectified do comply with applicable Australian Design Rules.

22.3. The terms of any such letter issued by Mr Kaufmann must be in a form approved in writing by NSWFT;

22.4. Prominently advertise on the web page www.playmor.com.au in terms corresponding to the matters set out at 1.22.2..1 to 1.22.2..2 above in a manner approved by NSWFT in writing in advance.

23. Within 30 days from the date of acceptance of this Undertaking, Mr Kaufmann will submit to NSWFT evidence that he has submitted to DIRD a Summary of Evidence that will enable DIRD to update the Identification Plate Approval (IPA) 33613 issued to Play Mor.

24. Within 90 days from the date of acceptance of this Undertaking, Mr Kauffman undertakes for the purposes of section 218 of the ACL to:

- 24.1. Provide to NSWFT a list in writing with the name and address of each consumer who has been in contact with him, together with a schedule of planned inspections and a schedule of repairs to 5th Wheeler Trailers to be undertaken or authorised to be performed by Mr Kaufmann;
25. Mr Kaufmann undertakes for the purposes of section 218 of the ACL to perform or authorise the performance of all repairs to 5th Wheeler Trailers affected by the voluntary recall so that any applicable non compliances with Australian Design Rules are rectified and the trailers comply with applicable Australian Design Rules and the Summary of Evidence for Identification Plate Approval (IPA) 33613.
26. Mr Kaufmann undertakes for the purposes of section 218 of the ACL to bear all costs associated with the inspections and repairs to all 5th Wheeler Trailers identified under the voluntary recall, identified in paragraphs 22.1 and 22.2 above.
27. Mr Kaufmann undertakes for the purposes of section 218 of the ACL to report and provide in writing to the Assistant Commissioner (as the case may be), at 6 monthly intervals from the date of acceptance of this Undertaking until such time as discharged in writing from this obligation by Assistant Commissioner, with respect to the following matters:
- 27.1. The consumers that have been contacted by Mr Kaufmann as required by paragraph 22.2 of this Undertaking and who have contacted Mr Kaufmann in relation to any of the matters forming the subject of this Undertaking;
- 27.2. The repairs effected to 5th Wheeler Trailers that have been undertaken or authorised to be performed by Mr Kaufmann pursuant to the schedule of planned inspections and repairs referred to in paragraph 24 of this Undertaking;
- 27.3. Provide copies of documentation in respect of the repairs to 5th Wheeler Trailers undertaken or authorised to be performed by Mr

Kaufmann, including but not limited to:

- 1.27.3..1. Documents evidencing who undertook the repairs;
- 1.27.3..2. Documents evidencing the repair undertaken;
- 1.27.3..3. Documents evidencing that the relevant 5th Wheeler Trailers are now compliant with applicable Australian Design Rules.

28. Mr Kaufmann generally undertakes that,

- 28.1. in supplying goods and services to consumers in trade or commerce, in particular trailers, personally or through any corporate entity of which he is an officer; and
- 28.2. in undertaking any repairs or modifications to the same, personally or through any corporate entity of which he is an officer, he will ensure that the relevant vehicles together with their component parts meet all applicable Australian Design Rules applicable to that vehicle at the time the vehicle is supplied to a consumer.

COMMENCEMENT OF UNDERTAKING

29. This undertaking comes into effect when the Assistant Commissioner accepts it pursuant to section 218 of the ACL.

SCOPE OF UNDERTAKING

30. This Undertaking is intended to have extraterritorial application in so far as the legislative powers, conferred by section 5A of the Act permit.

ACKNOWLEDGMENTS

31. The Assistant Commissioner acknowledges that Mr Kauffman has co-operated in resolving this matter and has expressed his desire to ensure that no consumers are disadvantaged by his actions.
32. The Assistant Commissioner and the person giving this Undertaking have agreed to resolve this matter by the giving and accepting of undertaking in the terms contained herein.
33. In accordance with section 218(2) of the ACL, the person giving this Undertaking may withdraw from or vary this Undertaking only with the consent of the Assistant Commissioner.
34. If the Assistant Commissioner considers that the person giving this Undertaking has breached any of the terms of the Undertaking, the Assistant Commissioner may apply to the Supreme Court of New South Wales for an order under section 218(4) of the ACL.
35. NSW Fair Trading may from time to time, at its discretion, make public reference to this Undertaking in the news media including print media, broadcast news, and the internet.
36. NSW Fair Trading will make this Undertaking, available for inspection, on the public register pursuant to section 86B of the Act.
37. This undertaking in no way derogates from:
 - 37.1. the power of the Assistant Commissioner to take any action in respect of a contravention of the Act, the ACL, or any other legislation administered by the Minister; or
 - 37.2. the rights and remedies available to any other person arising from the conduct the subject of the undertaking.

EXECUTION

James Kauffman

Date: 10/04/2016

[Redacted]

Witnessed by

[Redacted]

(Name and address of witness)

[Redacted]