

Undertaking to the Australian Competition and Consumer Commission

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

by Gerren Pty Ltd (ACN 140 929 246) trading as Parkside Funerals

Person giving the Undertaking

1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Gerren Pty Ltd (ACN 140 929 246) trading as Parkside Funerals (**Parkside Funerals**), for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**).

Background

2. Parkside Funerals operates two funeral homes in Tasmania which supply funeral and cremation services to consumers.

ACCC concerns

Estate Fee Representation

3. Since at least 3 February 2020 to 12 April 2021, Parkside Funerals represented to consumers, in its invoices, that an estate fee of \$500 would be deducted from the consumer's invoice in the event that payment of the invoice was received by the due date.
4. By describing the \$500 fee as an 'Estate Fee', Parkside Funerals represented that the 'Estate Fee' was a cost associated with the provision of its funeral and/or cremation services (**Estate Fee Representation**).
5. The ACCC considers that the Estate Fee Representation was false or misleading because the \$500 'Estate Fee' was in fact a penalty that Parkside Funerals applied if the customer did not pay the invoice by the due date.
6. The ACCC considers that, by making the Estate Fee Representation, Parkside Funerals engaged in misleading or deceptive conduct, and made false or misleading representations in contravention of sections 18 and 29(1)(i) of the Australian Consumer Law (**ACL**), contained in Schedule 2 to the CCA.
7. From 22 July 2021, Parkside Funerals revised its invoices and Funeral Consent Form, now named the 'Terms of Engagement' (**Amended Contract**), by replacing the term 'estate fee' with the term 'late payment fee' and included a statement that the 'late payment fee' of \$500 will apply if full payment is not made by the due date specified on the invoice.

Unfair Contract Terms

8. Since at least 1 January 2020 to 22 July 2021, Parkside Funerals has entered into the following standard form contracts for the supply of funeral and cremation services to consumers:
 - a) the Financial Consent Form, which was in use from 1 January 2020 to at least 22 December 2020;

- b) the Funeral Consent Form, which was in use from 1 January 2020 to at least 22 December 2020; and
- c) the revised Funeral Consent Form, which was in use since at least 22 December 2020 to at least 22 July 2021,

collectively, the **Contracts**.

9. The Contracts contained terms that permitted Parkside Funerals to:

- a) increase the upfront price payable under the contract by carrying out any mortuary procedures that it considered were necessary, without a requirement to give the consumer prior notice about the nature and cost of the mortuary procedures, and without giving the consumer a right to terminate the contract once the nature and cost of the mortuary procedures was known;
- b) charge an interest rate of 10.75% on the outstanding amount of an invoice, including the estate fee, without specifying whether interest was compounded on a monthly basis or an annual basis, and/or without specifying the day from which interest would be charged; and
- c) in the case of pre-paid funerals, charge the consumer for additional services requested by persons that were not a party to the contract, without a requirement to provide the consumer with a right to refuse these additional services and their cost,

collectively, the **Terms of Concern**.

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

- a) create a significant imbalance in the parties' rights and obligations;
- b) are not reasonably necessary to protect Parkside Funerals' legitimate interests; and
- c) would cause detriment to a consumer if applied or relied upon by Parkside Funerals.

11. In response to the ACCC's concerns, Parkside Funerals reviewed the Terms of Concern and since at least 22 July 2021 has made the following changes as part of its Amended Contract:

- a) where additional mortuary services, such as embalming procedures are considered necessary, Parkside Funerals will provide the consumer with an embalming consent form, containing the nature and cost of these additional services, and providing the consumer with a right to terminate once these additional mortuary service costs are known;
- b) to charge an interest rate, referable to the costs likely to be incurred by Parkside Funerals, on any outstanding amount of an invoice (excluding any applicable late payment fee), and will advise whether interest is compounded per month or per annum, and the date from which interest will apply; and

- c) where a funeral is pre-paid, Parkside Funerals will provide the consumer with a cost estimate for any additional services, and seek written consent from the consumer before performing these additional services and adding the expenses onto the consumer's invoice.

Admissions, Acknowledgements and Resolution

12. In response to the ACCC's concerns, Parkside Funerals:

- a) admits that by making the Estate Fee Representation it has engaged in misleading or deceptive conduct and made false or misleading representations in contravention of sections 18 and 29(1)(i) of the ACL;
- b) acknowledges that the Terms of Concern are unfair within the meaning of sections 23 and 24 of the ACL and has amended its Contract;
- c) has cooperated with the ACCC's enquiries; and
- d) offered this undertaking to the ACCC to resolve the ACCC's concerns.

13. Parkside Funerals has also agreed to resolve the ACCC's concerns by payment of an infringement notice, with a penalty of \$13,320, issued under section 134A of the CCA for an alleged contravention of section 29(1)(i) of the ACL.

Commencement of the Undertaking

14. This Undertaking comes into effect when:

- a) this Undertaking is executed by Parkside Funerals; and
- b) this Undertaking so executed is accepted by the ACCC (**the Commencement Date**).

15. This Undertaking has effect for three (3) years from the Commencement Date.

16. Upon the Commencement Date, Parkside Funerals assumes the obligations set out in paragraphs 17 – 26 of this Undertaking for the purposes of section 87B of the CCA.

Undertakings

Estate fee

17. Parkside Funerals must, within 30 days of the Commencement Date and at its own expense, ensure all its invoices, any Funeral Consent Forms, Amended Contracts and other contracts with consumers, however described, for the supply of funeral and/or cremation services, are amended to clearly state:

- a) the due date for payment of the invoice;
- b) the amount of any fee that will be applied for late payment; and
- c) the date from which any late payment fee will apply.

Any such fee will be clearly described as a fee for late payment and not as a discount for paying on time or an 'estate fee' or similar term.

18. Parkside Funerals must, within 30 days of the Commencement Date and at its own expense, send or cause to be sent a communication in the form provided at **Annexure A** to this Undertaking to all consumers who were charged an estate fee since 3 February 2020 and who have not received a refund of the estate fee. Parkside Funerals must refund the estate fee within 30 days of receiving the consumer's response to the communication.
19. Within 30 days of sending the correspondence referred to in paragraph 18 above, Parkside Funerals must provide the ACCC with copies of that correspondence.
20. Within 2 months of administering refunds for the estate fee to consumers, Parkside Funerals must provide a report to the ACCC which details:
 - a) the number of consumers who received a refund, and the amount that each consumer received; and
 - b) where consumers who were eligible for a refund have not received that refund, an explanation as to why, and a description of the steps Parkside Funerals has taken to provide the refund.

Current contracts

21. Parkside Funerals undertakes that it will not enforce or rely on the Terms of Concern for any Contract entered into with a consumer after 1 January 2020 that is still in force.

Future contracts

22. Parkside Funerals undertakes that it will not include the Terms of Concern, or any term that has the same effect as the Terms of Concern, in future contracts with consumers.
23. Parkside Funerals undertakes that future contracts entered into with consumers will include terms:
 - a) requiring Parkside Funerals to obtain the written consent of the consumer before it increases the price payable under the contract for additional mortuary procedures that it considers are necessary, and providing a right to the consumer to terminate the contract without penalty after being advised of the nature and cost of these additional mortuary procedures;
 - b) setting an interest rate to be applied to outstanding payments that is referable to the costs likely to be incurred by Parkside Funerals in pursuing unpaid invoices;
 - c) stating whether interest is compounded per month or per annum and specifying the date from which interest will be charged; and
 - d) requiring Parkside Funerals to obtain the consent of the consumer before it increases the price payable under the contract for any additional services requested by third parties, and providing a right for the consumer to refuse these additional services and their cost,

and will not include terms that:

- e) permit Parkside Funerals to charge additional interest on the fees for late payment.

24. Parkside Funerals undertakes that, within 30 days of the Commencement Date, it will implement an ongoing practice of providing all consumers with an itemised list of all potential costs associated with a cremation or funeral service prior to the consumer entering into a contract with Parkside Funerals.

Compliance Program

25. Parkside Funerals undertakes that, within three months of the Commencement Date and at its own expense, it will:

- a) establish and implement an ACL compliance program (**Compliance Program**) in accordance with the requirements set out in **Annexure B** to this Undertaking; and
- b) maintain and continue to implement the Compliance Program for a period of 3 years from the Commencement Date.

ACCC enquiries

26. For the purpose of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries of Parkside Funerals with respect to compliance with this Undertaking, and Parkside Funerals will respond to such enquiries within the time period stipulated by the ACCC.



Acknowledgments

27. Parkside Funerals acknowledges that:

- a) 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;
- b) the ACCC will, from time to time, make public reference to this Undertaking, including in news media statements and in ACCC publications; and
- c) 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 Gerren Pty Ltd (ACN 140 929 246) 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 12.11.2021	Date

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

15 December 2021

Date

and signed on behalf of the Commission:



Chair

15 December 2021

Date

ANNEXURE A
NOTIFICATION TO CONSUMERS

Mail Version:

Dear [insert name]

Refund of \$500 estate fee paid to Parkside Funerals

You are entitled to a refund of the \$500 estate fee that you recently paid to Parkside Funerals.

To assist us pay your refund, please contact Parkside Funerals by phone on [insert number] or via email [insert email]. We will ask for your bank details, so that the refund can be deposited into your account. Please let us know if you would prefer a different method of payment.

Parkside Funerals has agreed with the Australian Competition and Consumer Commission (**ACCC**) to refund the estate fee, after the ACCC raised concerns that the way in which we described the estate fee was misleading.

Our commitment to provide this refund is made in a court enforceable undertaking we have given to the ACCC.

Yours sincerely,

xx

Email Version:

Email subject heading: IMPORTANT: Refund of \$500 estate fee paid to Parkside Funerals

Dear [insert name]

Refund of \$500 estate fee paid to Parkside Funerals

You are entitled to a refund of the \$500 estate fee that you recently paid to Parkside Funerals.

To assist us pay your refund, please contact Parkside Funerals by phone on [insert number] or via email [insert email]. We will ask for your bank details, so that the refund can be deposited into your account. Please let us know if you would prefer a different method of payment.

Parkside Funerals has agreed with the Australian Competition and Consumer Commission (**ACCC**) to refund the estate fee, after the ACCC raised concerns that the way in which we described the estate fee was misleading.

Our commitment to provide this refund is made in a court enforceable undertaking we have given to the ACCC.

Yours sincerely,

xx

ANNEXURE B

COMPETITION AND CONSUMER COMPLIANCE PROGRAM

Parkside Funerals will establish a Competition and Consumer Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Training

1. Within 1 month of this Undertaking coming into effect, and thereafter at least once a year for 3 years, [DIRECTOR'S NAME] 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. Parkside Funerals 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 1 month of this Undertaking coming into effect, Parkside Funerals will develop procedures for recording, storing and responding to consumer law complaints.

Provision of Compliance Program documents to the ACCC

4. Parkside Funerals 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, Parkside Funerals 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.