



## **ENFORCEABLE UNDERTAKING**

**Pursuant to section 198 of the  
*Australian Consumer Law and Fair-Trading Act 2012***

The commitments in this Undertaking are offered to the Director of Consumer Affairs Victoria by:

**JOSDAN-BEL PTY LTD trading as Ray White Epping  
ACN 081 076 066  
of Suite 24, 2 Enterprise Drive, Bundoora, Victoria**

**and**

**Daniel (Danny) Zanella**

**and**

**Geraldo (Jerry) Papaluca**

## The Director of Consumer Affairs Victoria

1. The Director of Consumer Affairs Victoria ("**the Director**") is a public official whose office is provided for under section 107 of the *Australian Consumer Law and Fair Trading Act 2012* ("**the ACLFTA**").
2. The holder of that office is responsible for the administration of the ACLFTA, together with Victoria's other consumer protection legislation, including the *Estate Agents Act 1980* ("**EAA**") and the Australian Consumer Law ("**the ACL**"), which has been enacted as a law of Victoria under Part 2.2 of the ACLFTA and known as the Australian Consumer Law (Victoria) ("**the ACL (Vic)**"). Schedule 1 of the ACLFTA provides that the EAA is a Consumer Act under the ACLFTA.
3. Under section 198 of the ACLFTA, the Director may accept a written Undertaking from a person in connection with:
  - a. a matter in relation to which the Director has a power or function under the ACLFTA; or
  - b. a matter relating to a contravention of any other Consumer Act.

## Background

4. Josdan-Bel Pty Ltd ACN 081 076 066 ("**the Company**"), trading as Ray White Epping, is a licensed estate agent with the licence number 047853L.
5. The Company's principal place of business is at 769 High Street, Epping, Victoria, 3076. The Company's registered address is Suite 24, 2 Enterprise Drive, Bundoora, Victoria 3083.
6. At all material times, Mr Daniel (Danny) Zanella was the Officer in Effective Control ("**OIEC**") of the estate agency business of the Company. Mr Zanella's estate agent licence number is 004236L.
7. Mr Geraldo (Jerry) Papaluca is a licensed estate agent and director (of the Company) with the licence number 065166L.

## Relevant legislation

8. Section 47A(1) of the EAA provides inter alia that before obtaining a person's signature on an engagement or appointment to sell ("**authority**"), an estate agent or agent's representative must ensure that the engagement or appointment contains an estimate of the selling price ("**ESP**") of the property.
9. Section 47A(1)(a)(ii) of the EAA (for those authorities signed after 1 May 2017 and section 47A(3) for those authorities signed prior to 1 May 2017 during the duration of the EAA previous to the amendments of 1 May 2017) provides if the ESP on an engagement or appointment to sell is expressed as a price range, the difference between the upper and lower limits of the range must not exceed 10 per cent of the amount of the lower limit of the range.

10. Section 47AF(2)(b)(ii) provides that a Statement of Information ("**SOI**") must include a median selling price for residential property sold during a period of not less than three consecutive months ending not more than six months before the SOI is prepared.
11. Section 47AF(2)(c) provides that a SOI must specify the type of residential property to which a median selling price in the SOI relates.
12. Section 47AF(2)(g) provides that a SOI must be in the form approved by the Director.
13. Section 47AF(5) provides that the agent or representative must ensure that a SOI that complies with section 47AF(2) is included with any advertisement for the sale of the residential property published by or on behalf of the agent or representative on any Internet site during the period that the residential property is offered for sale.
14. Section 49A(1)(c)(i) provides that an estate agent must not obtain, or seek to obtain, any payment from a person in respect of work done by, or on behalf of, the agent or in respect of any outgoing incurred by the agent unless the engagement or appointment contains details of the commission and outgoings that have been agreed.
15. Section 49A(1)(c)(ii) provides that in addition to those requirements set out in paragraph 14 above, if the commission is to be calculated on a percentage basis, a statement of that commission expressed as both a percentage and as a dollar amount that would be payable on the reserve price or any other relevant amount set out in the engagement.

## **Consumer Affairs Victoria Investigation**

16. In September 2017, Consumer Affairs Victoria ("**CAV**") identified, through its proactive compliance monitoring activities, a potential contravention of the EAA in relation to a property marketed for sale by the Company. CAV Inspectors subsequently attended the Company's business premises at 769 High Street, Epping, on two occasions on 8 November 2017 and 13 March 2018 to obtain documents relating to the marketing and sale of residential properties.
17. On 1 May 2017, the EAA was amended to incorporate a series of significant reforms. Inspectors identified contraventions occurring both before and after 1 May 2017.
18. CAV inspectors' inquiries found contraventions of the EAA in relation to the following properties:
  - a. 87 Cotters Road Epping 3076;
  - b. 13 Elmhurst Drive Wollert 3750;
  - c. Lot 6340 Kerrabee Drive Mernda 3754;
  - d. 3/422 Lower Plenty Road Viewbank 3084;
  - e. 28 Oriano Street Epping 3076;
  - f. 32 View Road Epping 3076;
  - g. Lot 2630 Althorp Street Wollert 3750;
  - h. 46 Baystone Road Epping 3076;
  - i. 1/248 Childs Road Mill Park 3082;



- j. 5 Eva Place Epping 3076;
- k. 24 Gallagher Way Mernda 3754;
- l. 4 Mombassa Drive Wollert 3750;
- m. 6 Phoenix Circuit Wollert 3750;
- n. 38/877-879 Plenty Road South Morang 3752;
- o. 41 Tilbury Street Thomastown 3074;
- p. 208/55 Oleander Avenue Mill Park 3082;
- q. 109/88 Epping Road Epping 3076;
- r. 105/88 Epping Road Epping 3076;
- s. 7/307 High Street Thomastown 3074;
- t. 34/122 High Street Preston 3072;
- u. 1/21 Starflower Way Truganina 3029;
- v. 10/107 Hazel Glen Drive Doreen 3754;
- w. 1/4 McCormack Avenue Epping 3076;
- x. 70 Bellavista Drive Wollert 3750;
- y. 14 Faston Road Kalkallo 3064;
- z. 494 Grimshaw Street Bundoora;
- aa. 75 Empress Avenue Wollert 3750;
- bb. 29 Inverloch Street Epping 3076; and
- cc. 1 Tench Court Mill Park 3082.

## **Contraventions of the Acts**

### **Section 47A(1) of the EAA**

19. CAV Inspectors identified that the authority did not contain the agent's ESP as required in respect of the following properties:
- a. 87 Cotters Road, Epping, 3076 (authority undated);
  - b. 13 Elmhurst Drive, Wollert, 3750 (authority dated 14 January 2017);
  - c. Lot 6340 Kerrabee Drive Mernda 3754 (authority dated 19 September 2016);
  - d. 3/422 Lower Plenty Road Viewbank 3084 (authority dated 22 November 2016);
  - e. 28 Oriano Street Epping 3076 (authority dated 26 April 2017); and
  - f. 32 View Road Epping 3076 (authority dated 10 January 2017).

### **Section 47A(1)(a)(ii) / 47A(3) of the EAA**

20. CAV Inspectors identified that the authority contained an ESP range that exceeded 10% in respect of the following properties:
- a. Lot 2630 Althorp Street Wollert 3750 (authority dated 24 July 2017, ESP range of \$290,000 - \$320,000 and \$1,000 above the allowable range);

- b. 46 Baystone Road Epping 3076 (authority dated 20 December 2016, ESP range of \$370,000 - \$410,000 and \$3,000 above the allowable range);
- c. 1/248 Childs Road Mill Park 3082 (authority dated 25 January 2017, ESP range of \$340,000 - \$380,000 and \$6,000 above the allowable range);
- d. 5 Eva Place Epping 3076 (authority date could not be determined, ESP range of \$350,000 - \$400,000 and \$15,000 above the allowable range);
- e. 24 Gallagher Way Mernda 3754 (authority dated 25 November 2016, ESP range of \$250,000 - \$280,000 and \$5,000 above the allowable range);
- f. 4 Mombassa Drive Wollert 3750 (authority dated 24 October 2016, ESP range of \$540,000 - \$600,000 and \$6,000 above the allowable range);
- g. 6 Phoenix Circuit Wollert 3750 (authority date could not be determined, ESP range of \$530,000 - \$585,000 and \$2,000 above the allowable range);
- h. 38/877-879 Plenty Road South Morang 3752 (authority dated 5 January 2017, ESP range of \$280,000 - \$310,000 and \$2,000 above the allowable range); and
- i. 41 Tilbury Street Thomastown 3074 (authority dated 5 June 2017, ESP range of \$661,000 - \$730,000 and \$2,900 above the allowable range).

#### **Section 47AF(2)(c) of the EAA**

21. On 27 April 2018, CAV Inspectors identified on the Company's website at [www.raywhiteepping.vic.com.au](http://www.raywhiteepping.vic.com.au), a SOI where the median sales price related to a house, whereas the property for sale was an apartment, in respect of the following properties:
- a. 208/55 Oleander Avenue Mill Park 3082;
  - b. 109/88 Epping Road Epping 3076;
  - c. 105/88 Epping Road Epping 3076;
  - d. 7/307 High Street Thomastown 3074; and
  - e. 34/122 High Street Preston 3072.

#### **Section 47AF(2)(b)(ii) of the EAA**

22. On 27 April 2018, CAV Inspectors identified on the Company's website at [www.raywhiteepping.vic.com.au](http://www.raywhiteepping.vic.com.au), a SOI for the property at 1/21 Starflower Way, Truganina, 3029, where the end date used to calculate the median sales price was more than 6 months before the date the SOI was prepared. The median sales price period was February 2016 to February 2017, however the SOI was prepared sometime during or after November 2017, as evidenced by the selected comparable properties.

#### **Section 47AF(2)(g) of the EAA**

23. On 27 April 2018, CAV Inspectors identified on the Company's website at [www.raywhiteepping.vic.com.au](http://www.raywhiteepping.vic.com.au), that the Company failed to utilise the Director's approved



SOI from by including the incorrect declaration relating to comparable properties, in respect of the following properties:

- a. 1/4 McCormack Avenue Epping 3076: The SOI declared that there were 3 comparable properties, although no actual sales data was shown, as well as declaring that there were fewer than 3 comparable properties sold over a 6 months period and within 2 kilometres;
- b. 10/107 Hazel Glen Drive Doreen: The SOI declared that there were 3 comparable properties, although no actual sales data was shown;
- c. 70 Bellavista Drive Wollert 3750: The SOI declared that there were 3 comparable properties, although no actual sales data was shown, as well as declaring that there were fewer than 3 comparable properties sold over a 6 months period and within 2 kilometres; and
- d. 14 Faston Rod Kalkallo 3064: The SOI declared that there were 3 comparable properties, although no actual sales data was shown, as well as declaring that there were fewer than 3 comparable properties sold over a 6 months period and within 2 kilometres.

#### **Section 49A(1)(c)(i) of the EAA**

24. CAV Inspectors' identified that the authority for 41 Tilbury Street, Thomastown, 3076, signed as approved by the vendor on 5 June 2017 did not contain the details of the outgoings that had been agreed between the parties. The Company subsequently sought payment on 22 September 2017 to recover marketing costs from the vendor.

#### **Section 49A(1)(c)(ii) of the EAA**

25. CAV Inspectors identified that the authority contained a statement of commission (both percentage and dollar amount) that was not payable on the reserve amount nor any other relevant amount (including the ESP range) set out in the engagement or appointment, in respect of the following properties:
  - a. 494 Grimshaw Street Bundoora 3083: Authority dated 20 February 2017 contained a commission of 2% of the sales price. The dollar amount of the commission payable was listed as \$15,000. The sales price used to calculate this commission was \$750,000. The Company subsequently issued an invoice on 12 May 2017 to recover commission from the vendor.
  - b. 75 Empress Avenue Wollert 3750: Authority not signed by the vendor contained a commission of 2% of the purchase price plus GST. The dollar amount of the commission was not listed, nor did it include a sales price that the dollar amount commission would have been calculated on. The Company subsequently issued an invoice 22 September 2017 to recover commission from the vendor.

- c. 29 Inverloch Street Epping 3076: Authority dated 6 February 2017 contained a commission of 1.5% of the sales price. The dollar amount of the commission payable was listed as \$12,750. The sales price used to calculate this commission was \$850,000. The Company subsequently issued an invoice on 5 May 2017 to recover commission from the vendor.
- d. 1 Tench Court Mill Park 3082: Authority dated 26 June 2017 contained a commission of 2% of the sales price. The dollar amount of the commission payable was listed as \$14,000. The sales price used to calculate this commission was \$700,000. The Company subsequently issued an invoice on 4 October 2017 to recover commission from the vendor.
- e. 41 Tilbury Street Thomastown 3076: Authority dated 5 June 2017 contained a commission of 1.9% of the sales price including GST. The dollar amount of the commission payable was listed as \$14,250. The sales price used to calculate this commission was \$750,000. The Company subsequently issued an invoice on 22 September 2017 to recover commission from the vendor.

## **Acknowledgment of the Contraventions**

26. Mr Daniel (Danny) Zanella and Mr Geraldo (Jerry) Papaluca, personally, and on behalf of the Company, acknowledges that:

- a. by engaging in the conduct referred to in paragraph 19 above, the Company contravened section 47A(1) of the EAA;
- b. by engaging in the conduct referred to in paragraph 20 above, the Company contravened section 47A(1)(a)(ii) / 49A(3) of the EAA;
- c. by engaging in the conduct referred to in paragraph 21 above, the Company contravened section 47AF(2)(c) of the EAA;
- d. by engaging in the conduct referred to in paragraph 22 above, the Company contravened section 47AF(2)(b)(ii) of the EAA;
- e. by engaging in the conduct referred to in paragraph 23 above, the Company contravened section 47AF(2)(g) of the EAA;
- f. by engaging in the conduct referred to in paragraphs 21 to 23 above, the Company contravened section 47AF(5) of the EAA;
- g. by engaging in the conduct referred to in paragraph 24 above, the Company contravened section 49A(1)(c)(i) of the EAA; and
- h. by engaging in the conduct referred to in paragraph 25 above, the Company contravened section 49A(1)(c)(ii) of the EAA.

27. Mr Daniel (Danny) Zanella and Mr Geraldo (Jerry) Papaluca, personally and on behalf of the Company seeks to address these contraventions by offering this Enforceable Undertaking to the Director.



## The Enforceable Undertakings

### Compliance program

28. Mr Daniel (Danny) Zanella and Mr Geraldo (Jerry) Papaluca, personally and on behalf of the Company, hereby undertake to the Director, pursuant to section 198 of the ACLFTA, that it will, at its own expense, establish within three (3) months of the date of the execution of the undertaking, a compliance program which meets the requirements in **Annexure "A"** and maintain the compliance program for three (3) years from the date on which it is established.
29. The Company provide to the Director, within three months of signing this undertaking, a signed affidavit from Mr Daniel (Danny) Zanella, as the Officer in Effective Control, verifying that the Company has implemented the compliance program.

### Publication of Notice

30. Mr Daniel (Danny) Zanella and Mr Geraldo (Jerry) Papaluca, personally and on behalf of the Company, undertake to the Director, pursuant to section 218 of the ACL (Vic), that it will, within 14 days of the commencement of this Undertaking, cause to be displayed prominently and conspicuously for a continuous period of 3 months at or near each the reception desk in each of its existing or new premises from which it carries on real estate services, a Notice in the form of **Annexure "B"** below to this Undertaking. Each such Notice must be:
- a. be a minimum size of 30 cm x 42 cm (A3 size);
  - b. use a minimum type size of 12 point Times New Roman or equivalent; and
  - c. be in full colour.
31. Mr Daniel (Danny) Zanella and Mr Geraldo (Jerry) Papaluca, personally and on behalf of the Company, undertake to the Director, pursuant to section 218 of the ACL (Vic), that they will retain and continue to operate the website accessible via uniform resource locator at the web address [www.raywhitepping.vic.com.au/](http://www.raywhitepping.vic.com.au/) ("the website") and within 14 days of commencement of this Undertaking, cause the Notice in the form of **Annexure B** below, to be published on the website (or if any such URL is replaced or changed, the Internet home page of the corresponding website), for a period of 3 months from the date of this Undertaking and to use its best endeavours to ensure that:
- a. the Notice is viewable by clicking through a "click-through" icon located on the website or any replacement website; and
  - b. the "click-through" icon referred to in the previous paragraph is located in a central position on the page first accessed when the user opens to the home page of the website or any replacement website.



## **Notification of vendors**

32. Mr Daniel (Danny) Zanella and Mr Geraldo (Jerry) Papaluca, personally and on behalf of the Company, undertake, to the Director that within 60 days of the commencement of this undertaking, the Company will send a copy of this executed undertaking together with a letter to all vendors, who signed an authority referred in paragraph 24 and 25 above, at their last known address stating that:

- a. the Company and its directors has acknowledged to the Director of Consumer Affairs Victoria that the Company has contravened section 49A(1) of the EAA in relation to the authorities referred to in paragraph 24 and 25 of that undertaking;
- b. as a consequence of the Company's non-compliance with section 49A(1) of the EAA, the Company may not be entitled to sue for or recover or retain any commission or money in respect of any outgoings for or in respect of any transaction in relation to that vendor's authority pursuant to section 50(1) of the EAA; and
- c. the vendor can contact the Company's Compliance Officer appointed under the Compliance Program set out in Annexure A of the undertaking to make further enquiries or to lodge a complaint.

## **Contribution to the Victorian Consumer Law Fund**

33. Mr Daniel (Danny) Zanella and Mr Geraldo (Jerry) Papaluca, personally and on behalf of the Company, undertake, to the Director that within 30 days of the commencement of this undertaking, the Company will pay the sum of **\$5,000** to the Victorian Consumer Law Fund, created under section 134 of the ACLFTA.

## **Commencement and Duration of the Undertaking**

34. The Enforceable Undertaking commences when:

- a. it is executed by Mr Daniel (Danny) Zanella and Mr Geraldo (Jerry) Papaluca, personally and on behalf of the Company ; and
- b. it is accepted and executed by the Director; and
- c. notice is given, in writing, by the Director's staff to the Company or its representative, of the happening of the matters contained in paragraph 36 (a) and (b).

35. The term of the Enforceable Undertaking shall be for a period of 3 years from the date the Enforceable Undertaking is accepted by the Director.

## **Public Nature of Undertaking**

36. Mr Daniel (Danny) Zanella and Mr Geraldo (Jerry) Papaluca, personally and on behalf of the Company acknowledges that:

- a. the Director will register this Enforceable Undertaking in the Register of Undertakings and make this Enforceable Undertaking available for public inspection pursuant to section 200 of the ALCFTA;
- b. the Director and/or the Minister for Consumer Affairs Victoria may, from time to time, publicly refer to this Enforceable Undertaking;
- c. this Enforceable Undertaking in no way derogates from the rights and remedies available to the Director arising from any conduct described in this Enforceable Undertaking that arises from conduct outside the relevant period or from future conduct (including the right to pursue compensation for or in the name of any consumer);
- d. this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person or entity (including any other regulatory agency) arising from any conduct described in this Enforceable Undertaking that arises from conduct outside the relevant period or from future conduct; and
- e. this Enforceable Undertaking in no way derogates from the obligation of the Company, its officers, employees, and agents to fully comply with the provisions of the Act and associated regulations.

## Execution

JOSDAN-BEL PTY LTD trading as Ray White Epping ACN: 081 076 066

Signed by:



**Mr Daniel (Danny Zanella) in his capacity as OIEC and Director of Josdan-Bel Pty Ltd.**

In the presence of: Witness

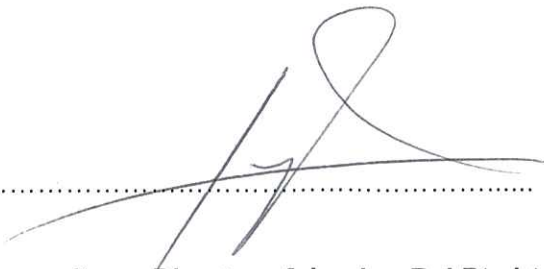


Print name:

LEAH KEATING

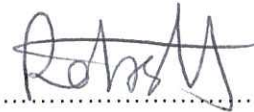
And

Signed by:



Mr Geraldo (Jerry) Papaluca in his capacity as Director of Josdan-Bel Pty Ltd

In the presence of: Witness

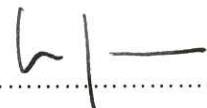


Print name:

ROBERT STEFANOVSKI

**Accepted by:**

The Director of Consumer Affairs Victoria, pursuant to section 198 of the ACLFTA.



**Simon Cohen**

**Director of Consumer Affairs Victoria**

Dated:

10<sup>th</sup>

day

October

month

2018



## **Annexure “A”**

### **COMPLIANCE PROGRAM**

The Company will establish a Compliance Program that complies with each of the following requirements:

#### **Appointments**

1. The Company will:
  - a. appoint a Director or a Senior Manager with suitable qualifications or experience in corporate compliance as Compliance Officer with responsibility for ensuring the Compliance Program is effectively designed, implemented and maintained;
  - b. appoint a qualified, internal or external, compliance professional with expertise in the Estate Agents Act 1980 (the Compliance Advisor). The Company shall instruct the Compliance Advisor to conduct a risk assessment in accordance with 1 (b) (i) to (iii) below:
    - i. Identify the areas where the Company is at risk of breaching:
      - a. sections 47A- 49A of the EAA
    - ii. identify where there may be gaps in the Company's existing procedures for managing these risks; and
    - iii. provide recommendations for action having regard to the assessment.
2. The Company will issue a policy statement outlining the Company's commitment to trade practices compliance (Compliance Policy). The Compliance Policy is:
  - a. is written in plain language;
  - b. contains a statement of commitment to compliance with the EAA;
  - c. contains a strategic outline of how commitment to compliance will be realized within the Company;
  - d. contains a requirement for all staff to report any Compliance Program related issues or concerns to the Compliance Officer;
  - e. contains a guarantee that whistle-blowers will not be prosecuted or disadvantaged in any way for making a genuine report and that their reports will be kept confidential and secure; and
  - f. contains a clear statement that the Company will act internally against any persons who are knowingly or recklessly concerned in a contravention of the applicable legislation administered by Consumer Affairs Victoria (including the EAA) and will not indemnify them.

## **Complaints Handling System**

3. The Company will ensure that the Compliance Program includes a complaints handling system. The Company shall use its best endeavours to ensure this system is consistent with AS/ISO 1002:2006 Customer satisfaction- Guidelines for complaints handling in organizations, though tailored to the Company's circumstances. The Company will ensure that staff and customers are made aware of the complaints handling system.
4. The Company will ensure that the Compliance Program provides for regular (at least once a year) and practical training for all directors, officers, employees, representatives and agents, whose duties could result in them being concerned with conduct that may contravene sections 47A to 49A of the EAA.
5. The Company must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in the EAA and is updated regularly to address any legislative amendments.
6. The Company will ensure that the Compliance Program includes a requirement that awareness of EAA compliance issues forms part of the induction of all new directors, officers, representatives and agents, whose duties could result in them being concerned with conduct that may contravene sections 47A to 49A of the EAA.
7. The Company shall, at its own expense, within 3 months of the date of the execution of this Undertaking, cause to be produced and provided to the Director copies of each of the documents constituting the Compliance Program and implement promptly and with due diligence any recommendations that the Applicant may make that are reasonably necessary to ensure that the Company maintains and continues to implement the Compliance Program in accordance with the requirements of the undertaking.

## Annexure "B"

### IMPORTANT PUBLIC NOTICE:

### WE HAVE DONE THE WRONG THING

Josdan-Bel Pty Ltd (ACN: 081 076 066) ('Ray White Epping'), acknowledges that we breached the *Estate Agents Act 1980*, including underquoting provisions.

We did this by:

- Obtaining an authority to sell:
  - without first providing an estimated selling price; and/or
  - without first ensuring that the difference between the upper and lower limit of an estimated selling price range did not exceed 10 per cent of the amount of the lower limit.
- publishing statements of information for properties that:
  - did <sup>not</sup> specify the correct residential property to which a median selling price relates;
  - contained an out-dated median price; and/or
  - were not in the legally required form.
- requiring:
  - payment for costs, without stating in the authority to sell how much the vendor would pay; and/or
  - payment of commission, without calculating and advising the fee in the legally required way.

We have agreed to:

- implement a compliance program to ensure that we do not further breach the *Estate Agents Act 1980* ; and
- contribute **\$5,000** to the Victorian Consumer Law Fund.

This notice is published and paid for by Josdan-Bel Pty Ltd trading as Ray White Epping in accordance with an Enforceable Undertaking accepted by the Director of Consumer Affairs Victoria.