



ASSURANCE
Fair Trading Act, 1987
Section 79, and

UNDERTAKING
Australian Consumer Law (SA)
Section 218

Assurance / Undertaking to the Commissioner for Consumer Affairs given for the purposes of section 79 of the *Fair Trading Act 1987* (SA) and section 218 of the *Australian Consumer Law* by:

Charles Leonard Fenton (ABN 91 892 521 015) T/A Holtan Building and Maintenance Services

PERSONS GIVING THIS ASSURANCE & UNDERTAKING

1. This Assurance / Undertaking is given to the Commissioner for Consumer Affairs ("the Commissioner") by Charles Leonard Fenton trading as Holtan Building and Maintenance Services of Strathalbyn, in the State of South Australia, for the purposes of section 79 of the *Fair Trading Act 1987* (SA) and section 218 of the *Australian Consumer Law (SA)* ("the ACL"), which is adopted by the *Fair Trading Act 1987* (SA).

BACKGROUND

2. Mr Charles Leonard Fenton is a natural person and sole trader, ABN 91 892 521 015.
3. On 23 May 2013, Consumer and Business Services ("CBS") granted Mr Fenton a building work contractor's licence limited to brick paving, concrete floor paving, concrete path paving, earthworks construction limited to site preparation, fencing limited to post and rail and tubular excluding panel, floor finishing, installation of ceiling insulation in dwellings, rainwater tank installation limited to above ground, retaining walls limited to 1 metre in height, sheds and garages, and storm water drainage limited to 90mm (BLD 254114) ("the licence").
4. Section 28 of the *Building Work Contractors Act 1995* ("BWC") requires the following:
 - That a domestic building work contract must be in writing.
 - Must set out in full all the contractual terms.
 - Must set out the name in which the building work contractor carries on business under the contractor's licence.
 - The contractor's licence number and the names and licence numbers of any other persons with whom the contractor carries on business as a building work contractor in partnership.
 - The contract must comply with any requirements of the regulations as to the contents of domestic building work contracts.
 - The contract must be signed by the building work contractor and the building owner personally or through an agent authorised to act on behalf of the contractor or building owner.

- The building owner must be given a copy of the signed contract as soon as reasonably practicable after it has been signed by both parties together with a notice in the prescribed form containing the prescribed information.
 - The copy of the contract and the notice given to the building owner must (apart from signatures or initials) be readily legible.
5. Section 30 of the BWC requires that payments requested under domestic building work contracts represent genuine progress payments for work completed under the contract, and that any deposit payment requested under domestic building work contracts is not in excess of that authorised under the Act as specified in Regulation 17 of the *Building Work Contractors Regulations 2011*.
 6. Section 158(7) of the ACL requires a person engaged in trade or commerce, who accepts payment (including part payment) for goods or services, to deliver the goods or services within a reasonable time. It is an offence to accept payment for goods or services and to fail to deliver the goods or services within a reasonable time.

CONDUCT OF CONCERN

7. In February 2017, Mr Fenton contracted in the amount \$40,128 to undertake building work, namely supplying and installing a shed with the associated ground preparation, and the construction of a retaining wall at a residential property in Nairne. Between February 2016 and May 2016 Mr Fenton performed some of that work. Mr Fenton requested a deposit of 50% and accepted a deposit payment of \$20,000 for the work. Mr Fenton did not commence the work within a reasonable time. Mr Fenton refunded the deposit less costs in July 2017.
8. In April 2017, Mr Fenton contracted in the amount \$12,896 to undertake building work, namely, the installation of fence posts, construction of a retaining wall, and associated earthworks at a residential property in Strathalbyn. Mr Fenton accepted payment for the work in full prior to any work being conducted. The work was performed, but was not of an acceptable standard.
9. In October 2017, Mr Fenton contracted in the amount \$3,866 to undertake building work, namely the construction of a retaining wall on residential land in Mount Barker. Mr Fenton accepted \$2,000 in payment as a deposit. Mr Fenton performed some of that work within a reasonable time, however this stalled and work was not completed until February 2018.
10. In October 2017, Mr Fenton contracted in the amount \$10,753 to undertake building work, namely the installation of fencing, concreting, a shed, synthetic turf, and paving of a driveway at a residential property in Mount Barker. Mr Fenton performed some of that work, but it was not completed within a reasonable time. Mr Fenton accepted a deposit payment of \$5,000 for the work prior to commencement. Mr Fenton did not complete the work. Mr Fenton refunded \$3,600 less costs in February 2018.
11. By engaging in the conduct described at [7] – [8] above, Mr Fenton failed to provide a domestic building work contract as required by the BWC Act.
12. By engaging in the conduct described at [7] – [10] above, Mr Fenton accepted payment (including part payments) in excess of that authorised under the Act as specified in Regulation 17 of the *Building Work Contractors Regulations 2011*.
13. By engaging in the conduct described at [7] – [10] above, Mr Fenton accepted payment (including part payments) for goods or services which he failed to deliver within a reasonable time.

CONTRAVENTIONS

14. As a result of the matters outlined above, the Commissioner considers, and Mr Fenton acknowledges, that it is likely that Mr Fenton has:
- 14.1 Contracted for domestic building work without a domestic building work contract in place contrary to section 28 of the BWC Act; and
 - 14.2 Requested payments in excess of those authorised under section 30 of the BWC Act, as specified in section 17 of the *Building Work Contractors Regulations 2011*.
 - 14.3 Accepted payment for goods or services and failed to provide those goods or services within a reasonable time contrary to section 158(7) of the ACL.

COMMENCEMENT OF ASSURANCE / UNDERTAKING

15. This Assurance / Undertaking comes into effect when:
- 15.1 The Assurance / Undertaking is executed by Mr Fenton; and
 - 15.2 The Commissioner accepts the Assurance / Undertaking so executed.

ASSURANCE / UNDERTAKING GIVEN FOR THE PURPOSES OF SECTION 79 OF THE FAIR TRADING ACT 1987 (SA) AND SECTION 218 OF THE AUSTRALIAN CONSUMER LAW (SA)

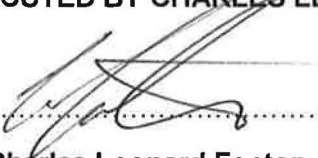
16. Mr Fenton hereby provides an Assurance / Undertaking to the Commissioner that he will not:
- 16.1 Contract for domestic building work without a domestic building work contract in place in accordance with section 28 of the BWC Act; and
 - 16.2 Will not request payments in excess of those authorised under section 30 of the BWC Act, as specified in Regulation 17 of the *Building Work Contractors Regulations 2011*.
 - 16.3 Will not accept payment for goods or services and then fail to provide those goods or services within a reasonable time, contrary to section 158(7) of the ACL.

ACKNOWLEDGMENTS

17. Mr Fenton acknowledges that:
- 17.1 It is an offence to breach an Assurance as set out in section 81 of the *Fair Trading Act 1987* and the Commissioner may take action for breach of an Undertaking given under the ACL;
 - 17.2 CBS will make this Assurance / Undertaking publicly available including by publishing it on CBS' public register of Assurances & Undertakings on its website;
 - 17.3 CBS may, from time to time, make public reference to the Assurance / Undertaking including in news media statements and in CBS publications;
 - 17.4 This Assurance / Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and

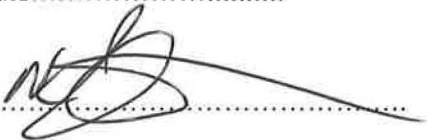
17.5 This Assurance / Undertaking may be produced to any Court in respect of any proceedings alleging any future contraventions of the *Fair Trading Act 1987* or a related Act or the *Australian Consumer Law*.

EXECUTED BY CHARLES LEONARD FENTON


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Mr Charles Leonard Fenton


Date: 14/06/18


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Signature of Witness

Witness name: NATHAN JEANES

Accepted by the Commissioner for Consumer Affairs (SA) pursuant to section 79 of the *Fair Trading Act 1987* (SA) and section 217 of the *Australian Consumer Law* (SA).


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Commissioner for Consumer Affairs (SA)

Date: 15/6/18