



ASSURANCE
Fair Trading Act 1987
Section 79

Assurance to the Commissioner for Consumer Affairs given for the purposes of s79 of the *Fair Trading Act 1987* by:

**JM & CO Landscaping Pty Ltd (ACN 624 324 232) t/a
JM & CO Landscaping Pty Ltd and Mr John Mori McDonald**

1. PERSONS GIVING THIS ASSURANCE

- 1.1. This Assurance is given to the Commissioner for Consumer Affairs ("the Commissioner") by JM & CO Landscaping Pty Ltd trading as JM & CO Landscaping Pty Ltd and Mr John Mori McDonald of Heathfield in the state of South Australia for the purposes of Section 79 of the *Fair Trading Act (SA) 1987*.

2. BACKGROUND

- 2.1. JM & CO Landscaping Pty Ltd (ACN 624 324 232) is a proprietary company limited by shares.
- 2.2. JM & CO Landscaping Pty Ltd is a licensed builder in South Australia.
- 2.3. Mr John Mori McDonald (Mr McDonald) is the director of JM & CO Landscaping Pty Ltd.
- 2.4. Between 1 December 2018 and 31 January 2019 JM & CO Landscaping Pty Ltd did not hold a building work contractor's licence issued under the *Building Work Contractor's Act 1995* ("the Act").
- 2.5. Section 6 of the Act prohibits a person from carrying on business as a building work contractor except as authorised by a licence under that Part.

3. CONDUCT OF CONCERN

- 3.1. Between 1 December 2018 and 31 January 2019 JM & CO Landscaping Pty Ltd carried on business as a building work contractor by installing a pool fence and carrying out paving work at a consumer's address after being sub-contracted to perform the work by another builder.
- 3.2. At all relevant times JM & CO Landscaping Pty Ltd did not hold a licence authorising the company to contract for building work.
- 3.3. As a result of the Commissioner's concerns to the conduct referred to in paragraph 3.2, JM & CO Landscaping Pty Ltd has since obtained a building work contractor's licence issued under the *Building Work Contractors Act 1995*.

4. CONTRAVENTIONS

4.1. The Commissioner considers, and JM & CO Landscaping Pty Ltd and Mr McDonald acknowledge that by engaging in the conduct described in paragraph 3 above, it is likely that JM & CO Landscaping Pty Ltd has:

4.1.1. carried on business as a building work contractor whilst not authorised to do so by licence, in contravention of section 6(1)(a) of the *Building Work Contractors Act 1995*.

5. ASSURANCE GIVEN BY JM & CO LANDSCAPING PTY LTD AND MR JOHN MORI McDONALD FOR THE PURPOSES OF SECTION 79 OF THE FAIR TRADING ACT 1987

5.1. In response to the concerns raised by Consumer and Business Services (CBS) on behalf of the Commissioner, JM & CO Landscaping Pty Ltd and Mr McDonald provide an Assurance to the Commissioner that they will not:

5.1.1. Carry on a business as a building work contractor unless authorised by licence under the *Building Work Contractors Act 1995*;

6. COMMENCEMENT OF ASSURANCE/UNDERTAKING

6.1. This Assurance comes into effect when:

6.1.1. the Assurance is executed by JM & CO Landscaping Pty Ltd

6.1.2. the Assurance is executed by Mr McDonald; and

6.1.3. the Commissioner accepts the Assurance so executed.

7. ACKNOWLEDGMENTS

7.1. JM & CO Landscaping Pty Ltd and Mr McDonald acknowledge that:

7.1.1. It is an offence to breach an Assurance, as set out in section 81 of the *Fair Trading Act 1987*;

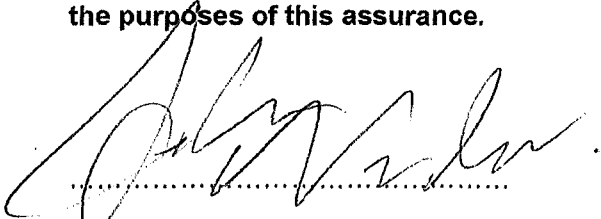
7.1.2. CBS will make this Assurance publicly available including by publishing it on CBS' public register of Assurances on its website;

7.1.3. CBS will, from time to time, make public reference to the Assurance including in news media statements and in CBS publications;

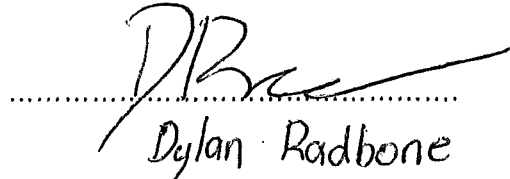
7.1.4. This Assurance in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and

7.1.5. This Assurance may be produced to any Court in respect of any proceedings alleging any future contraventions of the *Fair Trading Act 1987*.

EXECUTED BY JM & CO Landscaping Pty Ltd pursuant to *section 127(1) of the Corporations Act 2001 (Cth)* and Mr John Mori McDonald in his personal capacity for the purposes of this assurance.



John Mori McDonald
Director of JM & CO Landscaping Pty Ltd



Signature of Witness

Name:

Date: 26-5-20

Date: 29-5-20

Accepted by the Commissioner for Consumer Affairs (SA) pursuant to s79 of the *Fair Trading Act 1987* and section 218 of the *Australian Consumer Law (SA)*.



Dini Soulio
Commissioner for Consumer Affairs (SA)

Date: 3/6/20