

UNDERTAKING TO

THE EXECUTIVE DIRECTOR,
INVESTIGATIONS AND
ENFORCEMENT
NSW FAIR TRADING

GIVEN BY

Jin Chang Hu

FOR THE PURPOSES OF

SECTION 218
OF THE
AUSTRALIAN CONSUMER LAW



PERSON GIVING THIS UNDERTAKING

(1) This Undertaking is given to the Executive Director, Investigations and Enforcement, NSW Fair Trading, Department of Customer Service by:

Mr Jin Chang Hu, born [REDACTED] 1965 ("Mr Hu")

(2) Where this Undertaking is given by an individual, it is given in that individual's personal capacity.

INTERPRETATION AND DEFINITION

(3) In this undertaking, unless the context otherwise indicates:

"ACL" means the Australian Consumer Law

"FTA" means the Fair Trading Act 1987 (NSW)

"HBA" means the Home Building Act 1989 (NSW)

"Crimes Act" means the Crimes Act 1900 (NSW)

"Properties" means the following dwellings in NSW:

- i. [REDACTED] DENISTONE; and
- ii. [REDACTED], LINDFIELD; and
- iii. [REDACTED] GALSTON; and
- iv. [REDACTED] CARLINGFORD; and
- v. [REDACTED] BEECROFT; and
- vi. [REDACTED] GLADESVILLE.

BACKGROUND

(4) The Commissioner for Fair Trading ("the Commissioner"), the Executive Director, Investigations and Enforcement, ("Executive Director") and NSW Fair Trading ("NSWFT") perform functions pursuant to section 9 of the Fair Trading Act 1987 (NSW):

(5) "including the receipt and investigation of complaints and securing compliance with the provisions of the ACL any other legislation administered by the Minister".

(6) On 2 July 2009, Mr Hu, obtained a NSW Contractor Licence in the class of Electrician. That licence was surrendered by Mr Hu on the 31 May 2021.



On 11 December 2012, Mr Hu obtained a NSW Qualified Supervisor Certificate in the class of Building which authority is still current.

ASP Solar Pty Ltd was issued a NSW contractor licence on 10 August 2011 and will expire on 9 August 2023. Mr Hu is the sole director of the company and was the sole nominated supervisor of the company from 10 August 2011 until 22 July 2020.

The company is still the holder of its NSW contractor licence with another nominated supervisor having been appointed.

(7) Records from Australian Border Force (“ABF”) show that Mr Hu was offshore between 15 January 2019 and returned to Australia on 7 February 2019, therefore being offshore at the time the following 6 solar installations were carried out.

Properties:

[REDACTED] DENISTONE

(8) On or about 19 January 2019, ASP Solar Pty Ltd was subcontracted by Bell Solar Pty Ltd to carry out a solar installation [REDACTED] DENISTONE. Mr Hu is the person shown on the Certificate of Compliance – Electrical Work (“CCEW”) as having carried out or supervised the work and who undertook the required test on the system. The CCEW was completed with Mr Hu’s name, signature and contractor licence number 216371C.

(9) The CCEW is fraudulent as it would not be possible for Mr Hu to carry out, supervise or test the work whilst he was overseas. Mr Hu did not ensure that the specialist work for which the contractor licence authorises the holder to contract was done by the holder of an endorsed contractor licence.

(10) The identity of the person or persons who carried out the electrical work at the Properties is not known and therefore the person or persons who performed the work may have been unlicensed.

(11) By his conduct Mr Hu is in contravention of sections 16 of the HBA, and 307B of the Crimes Act 1900.

[REDACTED] LINFIELD

(12) On or about 26 January 2019, ASP Solar Pty Ltd was subcontracted by Bell Solar Pty Ltd to carry out a solar installation [REDACTED] LINFIELD. Mr Hu is the person shown on the CCEW as having carried out or supervised the work and who undertook the required test on the system. The CCEW was completed with Mr Hu’s name, signature and

contractor licence number 216371C.

(13) The CCEW is fraudulent as it would not be possible for Mr Hu to carry out, supervise or test the work whilst he was overseas. Mr Hu did not ensure that the specialist work for which the contractor licence authorises the holder to contract was done by the holder of an endorsed contractor licence.

(14) The identity of the person or persons who carried out the electrical work at the Properties is not known and therefore the person or persons who performed the work may have been unlicensed.

(15) By his conduct Mr Hu is in contravention of sections 16 of the HBA, and 307B of the Crimes Act 1900.

██████████ GALSTON

(16) On or about 26 January 2019, ASP Solar Pty Ltd was subcontracted by Bell Solar Pty Ltd to carry out a solar installation ██████████ GALSTON. Mr Hu is the person shown on the CCEW as having carried out or supervised the work and who undertook the required test on the system. The CCEW was completed with Mr Hu's name, signature and contractor licence number 216371C.

(17) The CCEW is fraudulent as it would not be possible for Mr Hu to carry out, supervise or test the work whilst he was overseas. Mr Hu did not ensure that the specialist work for which the contractor licence authorises the holder to contract was done by the holder of an endorsed contractor licence.

(18) The identity of the person or persons who carried out the electrical work at the Properties is not known and therefore the person or persons who performed the work may have been unlicensed.

(19) By his conduct Mr Hu is in contravention of sections 16 of the HBA, and 307B of the Crimes Act 1900.

██████████ CARLINGFORD

(20) On or about 2 February 2019, ASP Solar Pty Ltd was subcontracted by Bell Solar Pty Ltd to carry out a solar installation ██████████ CARLINGFORD. Mr Hu is the person shown on the CCEW as having carried out or supervised the work and who undertook the required test on the system. The CCEW was completed with Mr Hu's name, signature and contractor licence number 216371C.

(21) The CCEW is fraudulent as it would not be possible for Mr Hu to carry out, supervise or test the work whilst he was overseas. Mr Hu did not ensure that the specialist work for

which the contractor licence authorises the holder to contract was done by the holder of an endorsed contractor licence.

(22) The identity of the person or persons who carried out the electrical work at the Properties is not known and therefore the person or persons who performed the work may have been unlicensed.

(23) By his conduct Mr Hu is in contravention of sections 16 of the HBA, and 307B of the Crimes Act 1900.

██████████ BEECROFT

(24) On or about 3 February 2019, ASP Solar Pty Ltd was subcontracted by Bell Solar Pty Ltd to carry out a solar installation ██████████ BEECROFT. Mr Hu is the person shown on the CCEW as having carried out or supervised the work and who undertook the required test on the system. The CCEW was completed with Mr Hu's name, signature and contractor licence number 216371C.

(25) The CCEW is fraudulent as it would not be possible for Mr Hu to carry out, supervise or test the work whilst he was overseas. Mr Hu did not ensure that the specialist work for which the contractor licence authorises the holder to contract was done by the holder of an endorsed contractor licence.

(26) The identity of the person or persons who carried out the electrical work at the Properties is not known and therefore the person or persons who performed the work may have been unlicensed.

(27) By his conduct Mr Hu is in contravention of sections 16 of the HBA, and 307B of the Crimes Act 1900.

██████████ GLADESVILLE

(28) On or about 29 January 2019, ASP Solar Pty Ltd was subcontracted by Sky Solar Energy Pty Ltd to carry out a solar installation ██████████ GLADESVILLE. Mr Hu is the person shown on the CCEW as having carried out or supervised the work and who undertook the required test on the system. The CCEW was completed with Mr Hu's name, signature and contractor licence number 216371C.

(29) The CCEW is fraudulent as it would not be possible for Mr Hu to carry out, supervise or test the work whilst he was overseas. Mr Hu did not ensure that the specialist work for which the contractor licence authorises the holder to contract was done by the holder of an endorsed contractor licence.

(30) The identity of the person or persons who carried out the

electrical work at the Properties is not known and therefore the person or persons who performed the work may have been unlicensed.

(31) By his conduct Mr Hu is in contravention of sections 16 of the HBA, and 307B of the Crimes Act 1900.

MISLEADING, DECEPTIVE AND OTHERWISE UNLAWFUL CONDUCT

(32) It is alleged by NSW Fair Trading, that Mr Hu:

Contravened section 16 of the HBA by, being the holder of a contractor licence and failing to ensure that, when residential building work, or specialist work, for which the contractor licence authorises the holder to contract is being done by or on behalf of the holder, the work is done—

(a) by the holder of an endorsed contractor licence, or of a supervisor or tradesperson certificate, authorising its holder to do the work

and

Contravened section 307B (False and misleading information) of the Crimes Act in that the CCEW's for all the Properties subject to the allegations contained false and misleading information.

(33) The alleged breaches are as follows:

- A. Between 19 January 2019 and 3 February 2019, ASP Solar Pty Ltd was subcontracted by Bell Solar Pty Ltd and Sky Solar Energy Pty Ltd to carry out solar installations.*
- B. Mr Hu at the time of the installation was the installer according to the CCEW's completed for the installations.*
- C. Records from the Australian Border Force (ABF) indicate that Mr Hu was offshore between 15 January 2019 and returned to Australia on 7 February 2019, therefore being overseas at the time the installations were carried out.*
- D. During a meeting with NSW Fair Trading on 10 May 2021, Mr Hu and his legal representative advised that he prefilled his details and signatures on the relevant CCEWs. Mr Hu has shown a cavalier attitude for the requirements of the legislation. He has shown a lack of concern for safety in pre-signing CCEWs for work that was done at the Properties when he was offshore. The legislative scheme behind the HBA and the requirement for the work to*

be certified in the CCEWs is intended to protect consumers and consumers are meant to be able to rely on the CCEW as a certificate certifying the work was completed and tested by a suitably qualified and licensed person. Mr Hu has shown a lack of concern for consumers both in pre-signing CCEWs and not ensuring that the work was done by a qualified person.

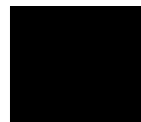
OBLIGATIONS UNDER THE UNDERTAKING- CORRECTIVE COMPONENT

(34)

- i.) Mr Hu undertakes to surrender both his Qualified Supervisors Certificate 67217S, and Contractor Licence 239013C in the name of ASP Solar Pty Ltd within 7 days from the date of acceptance of this undertaking;*
- ii.) Mr Hu undertakes to pay within 7 days from the date of acceptance of this Undertaking the sum of \$5,000 by way of electronic funds transfer to the account below, to the NSW Consumer Law Fund established under section 79Y of the FTA;*
- iii.) Mr Hu undertakes to arrange inspections of the aforementioned work at the Properties by a licensed electrician, testing of the electrical wiring work at the Properties by this licensed electrician and a CCEW certificate for each inspection and testing by this licensed electrician;*
- iv.) Mr Hu undertakes to provide a copy of each CCEW completed as result of the Obligation 34(iv) to NSW Fair Trading;*
- v.) The inspections and testing and completion and providing of the CCEWs as set out in 34(iv – v) is to take place within 6 weeks from the time this EU is agreed upon and signed.*

(35) *Obligations agreed upon for a period of 12 months commencing from date of acceptance of this undertaking. Mr Hu agrees to:*

- i.) Not apply for any authority under the HBA; and*
- ii.) Not apply to be, or be an officer (meaning a director, secretary or person concerned in the management) of a corporation that is involved in any way in the residential building industry; and*



- iii.) *Not to contract to do any 'residential building work' as defined in the HBA to include 'specialist work' including the coordination or supervision of any work; and*
- iv.) *Not to lodge an application to NSW Fair Trading for an authority under the HBA on his own behalf; and*
- v.) *Not to lodge an application to NSW Fair Trading for an authority under the HBA as an officer or person concerned in the management of a corporation.*

COMMENCEMENT OF UNDERTAKING

(36) This Undertaking comes into effect when the Executive Director accepts it pursuant to section 218 of the ACL.

SCOPE OF UNDERTAKING

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

ACKNOWLEDGMENTS

(38) During the course of the Investigation, on 10 May 2021, Fair Trading discussed their concerns with Mr Hu and his legal representatives. During these discussions Mr Hu was provided with evidence gathered by Fair Trading.

(39) Following the discussions with Mr Hu, Fair Trading issued a compulsory notice to Mr Hu under Section 127 of the HBA to provide various documents regarding the solar installations at the Properties. The documents confirm that the CCEW certificates were signed by Mr Hu purporting to certify that he did, inspected and tested the work at the properties when he did not in fact do so, and could not have done so as he was offshore.

(40) Over the following weeks, on 22 June 2021, Mr Hu's legal representatives wrote to Fair Trading advising that Mr Hu is willing to surrender his HBA authorities and not reapply for a period of 12 months.

(41) Mr Hu warrants that he has obtained independent legal advice in relation to this Undertaking and enters into this Undertaking voluntarily, without inducement and compulsion of any kind.

(42) The Executive Director acknowledges that Mr Hu has co-operated in resolving this matter.

(43) The Executive Director and the person giving this

Undertaking have agreed to resolve this matter by the giving and accepting of the Undertaking in the terms contained herein.

(44) In accordance with section 218(2) of the ACL, the person giving this Undertaking may withdraw from or vary this Undertaking only with the written consent of the Executive Director.

(45) If the Executive Director considers that the person or persons giving this Undertaking has contravened any of the terms of the Undertaking, the Executive Director will notify that person or persons of the contravention and provide a period of 14 calendar days to those persons to rectify the contravention.

(46) Where the contravention is rectified within the specified period, the Executive Director will not apply to the Supreme Court of New South Wales for an order under section 218(4) of the ACL in respect of that contravention.

(47) NSWFT will make this Undertaking, available for inspection, on the public register pursuant to section 86B of the Fair Trading Act and may rely on this Undertaking for the purpose of making public announcements in respect of the matters which are the subject of this Undertaking.

(48) Upon expiration of the surrender period of 12 months, the obligations under the undertaking herein shall cease. Mr. Hu shall be entitled to reapply his authorities under the HBA.

EXECUTION



Signed by Jin Chang Hu
Date: 11/05/2023



Signed by Valerie Griswold
Executive Director | Investigations and Enforcement | NSW
Fair Trading
Date: 11 May 2023