

# Undertaking to the Executive Director, Investigations and Enforcement, NSW Fair Trading

Given under section 218 of the *Australian Consumer Law 2010*  
by Bell Solar Pty Ltd ACN 617 634 876

## Undertaking made by Bell pursuant to the ACL

1. This Undertaking is given to the Executive Director, Investigation and Enforcement, NSW Fair Trading, being an authorised delegate of the Commissioner for Fair Trading (**Fair Trading**), by Bell Solar Pty Ltd (**Bell**) ACN 617 634 876, for the purposes of section 218 of the *Australian Consumer Law (ACL)*.

## Background

2. Relevantly Fair Trading administers the ACL, the *Home Building Act 1989 (NSW) (HBA)*, the *Licensing and Registration (Uniform Procedures) Act 2002 (NSW) (LRUP)*, the ACL as it applies as a law of New South Wales and the *Fair Trading Act 1987 (NSW) (FTA)*.
3. Bell is an Australian registered company which is engaged in the retail supply of solar systems throughout Australia.
4. Bell is licensed under the HBA, holding licence number 309865C in the category of electrical work (**Bell's licence**). Electrical installation work is a category of residential building work, specifically, specialist work as defined in Clause 2 of Schedule 1 to the HBA.
5. On 15 April 2020, Fair Trading received Bell's application for the renewal of Bell's licence.
6. On 9 April 2021, Fair Trading issued a notice of determination advising that Bell's application for renewal of Bell's licence had been refused (the **Refusal Decision**).
7. On 7 May 2021, Bell requested an internal review of the Refusal Decision.
8. On 11 May 2021, Bell commenced proceedings no. 2021/00131335 (**the Proceedings**) in the New South Wales Civil and Administrative Tribunal (**NCAT**) and sought review of the refusal decision and a stay of that decision.
9. On 25 May 2021, NCAT stayed the Refusal Decision: *Bell Solar Pty Ltd v Commissioner for Fair Trading* [2021] NSWCATOD 70.
10. On 1 June 2021, Fair Trading affirmed the Refusal Decision on internal review (the **Internal Review Decision**).
11. On 28 June 2021, with consent, Bell Solar amended the Proceedings so that the stay and the Proceedings applied to the internal review decision.

## Fair Trading's concerns

12. Fair Trading's concerns as set out in the internal review decision comprise:
  - a. Fair Trading considered that Bell had been the subject of an unreasonable number of complaints contrary to s.33B(1)(a)(vii) of the HBA being 176 complaints over the four year period from May 2017 to May 2021.
  - b. Fair Trading held concerns that Bell's proposed arrangements for supervision of its installation work were not adequate for the purposes of s.20(3)(b) of the HBA. Fair Trading alleged that Bell failed to identify false declarations made by third parties in relation to creation of 19,254 certificates between 16 October 2017 and 6 December 2019 in relation to 142 solar photovoltaic installations.
  - c. Fair Trading alleged, by way of concerns, that the following matters adversely impacted Bell's fitness and propriety for the purposes of s.20(1)(a) of the HBA:
    - i. Bell nominated an independent contractor as its Nominated Supervisor in 2017 rather than an employee contrary to section 33C(6) of the HBA; and
    - ii. Bell failed to notify Fair Trading of changes to three directorships of Bell within the prescribed time limits contrary to section 24 of the LRUP.
13. Bell is committed to addressing Fair Trading's concerns through this undertaking and has also specifically responded as follows:
  - a. The number of complaints considered by Fair Trading represents less than 1% of the customers served by Bell in NSW in the relevant period. Further, many of the complaints related to delays and supply difficulties that arose as a result of the Covid-19 crisis. That being said, Bell have taken steps to improve its customer management processes and after-sales service and is committed to reducing the number of complaints both as an overall number, and as a percentage of the customers served by Bell. The number of complaints for 2021 represent a significant reduction from that in 2020.
  - b. Bell has undertaken significant software and compliance systems development in order to improve the supervision of subcontractors engaged to conduct installation works. Each Bell installation will be supervised by the nominated supervisor of the installing subcontractor engaged by Bell and random audits will be carried out by Bell's team of nominated supervisors. Pursuant to this undertaking Bell also has committed to:
    - i. employ 3 nominated supervisors to continue to develop the supervision systems and conduct audits and supervision of the installation work performed by subcontractors;
    - ii. report to Fair Trading at regular intervals as to the supervision work undertaken by Bell;
    - iii. report to Fair Trading as to a comprehensive review of installations currently being undertaken by Bell.

- c. As to its fitness and propriety, the identified errors have been admitted and corrected. Bell is committed to the highest standards of fitness and propriety and corporate governance. Bell acknowledges that:
  - i. the incorrect nomination of a subcontractor as a nominated supervisor described at [12.c.i] above was likely to constitute a contravention of section 34 of the ACL by misleading the public as to the nature of the services provided by Bell, which was information that was subsequently recorded on the NSW Fair Trading Contractor & Tradepersons Register maintained under section 120 of the HBA.
  - ii. Bell's failure to notify the changes in the directorship of Bell was a contravention of s.24 of LRUP.

### **Commencement and terms of this Undertaking**

14. This Undertaking comes into effect when:
  - a. it is executed by Bell, and
  - b. this Undertaking so executed is accepted by Fair Trading (the **Commencement Date**).
15. This Undertaking has effect for three (3) years after the Commencement Date (the **Term**).
16. Upon the commencement of this Undertaking:
  - a. Bell undertakes to assume the obligations set out in paragraphs [17] to [20] below for the Term of the Undertaking for the purposes of section 218 of the ACL; and
  - b. Fair Trading agrees to:
    - i. withdraw the Refusal Decision and the Internal Review Decision;
    - ii. renew Bell's licence (being electrical contractor licence number 309865C) for a period of three years and
    - iii. acting reasonably, to consider any future application for renewal of Bell's licence in good faith.

### **Undertaking**

#### ***Nominated Supervisor***

17. Within 30 days from the Commencement date, Bell Solar will to nominate in writing to Fair Trading at least three suitably qualified persons to be nominated supervisors for the electrical installation work performed by Bell Solar, one of which will be a dual nomination application for a person employed by a related company.
18. All nominated supervisors are to be directly employed by Bell at least on a part time basis and Bell will provide evidence of direct employment of those persons by Bell.
19. For a period of 3 years from the Commencement Date, Bell Solar undertakes to provide to Fair Trading on a quarterly basis, by the first business day following each of 31 March,

30 June, 30 September and 31 December, a report detailing each of the installations which have been supervised by each of the nominated supervisors employed by Bell.

### ***Compliance Program***

20. Bell will, within 3 months from the Commencement Date:

- a. appoint a senior employee with suitable qualifications or experience in corporate compliance as Compliance Officer, with responsibility for establishing, maintaining and administering on an on-going basis, a Compliance Policy and a Complaint Management Program consistent with AS ISO 10002-2018, "Quality Management-Customer Satisfaction-Guidelines for Complaint Handling in Organisations"
- b. develop a Compliance Policy which is communicated in writing to all employees, subcontractors, servants or agents of Bell or any other persons involved in the business of Bell which contains the following:
  - i. a statement of Bell's commitment to comply with the HBA, the ACL, the LRUP, the FTA and all other relevant legislation and any applicable requirements pertaining to the installation of electrical installations;
  - ii. a statement of Bell's commitment to dealing with consumer complaints in accordance with the standards set out in AS ISO 10002-2018 "Quality Management-Customer Satisfaction-Guidelines for Complaint Handling in Organisations" (together, "**the Compliance Policy**");
- c. develop and implement a Complaint Management Program consistent with AS ISO 10002-2018, "Customer Satisfaction - Guidelines for Complaint Handling in Organisations" tailored to the circumstances of Bell ("**the Complaint Management Program**");
- d. develop and prominently publish on any website through which Bell advertises, markets and offers for supply the Services to consumers, a Complaint and Refund Policy and Procedure to deal with consumer complaints and requests for refunds in relation to the Services supplied to consumers by Bell that fully complies with the ACL ("**the Refund Policy and Procedure**");
- e. prominently publish on any websites operated by Bell now or in the future, advertises, markets and offers for supply the services to consumers, the contact details of Bell, including a registered office address for the receipt of correspondence, an email address for the receipt of email correspondence, the business trading address and a contact telephone number;
- f. Provide to the Executive Director, Investigations and Enforcement within 4 months from the Commencement Date:
  - i. Documents evidencing the appointment of a Compliance Officer; and
  - ii. Documents evidencing the Compliance Program, the Complaint Management Program and the Refund Policy and Procedure.

## Payment of Pecuniary Penalty

21. Bell undertakes to pay Fair Trading an amount of \$35,000 by way of pecuniary penalty for the incorrect nomination of a subcontractor as a nominated supervisor described at [12.c.i] above which was likely to constitute a contravention of section 34 of the ACL by misleading the public as to the nature of the services provided by Bell, which was information that was subsequently recorded on the NSW Fair Trading Contractor & Tradepersons Register. Such payment is payable as follows:
  - a. \$15,000 within 28 days from the date that the NCAT Proceedings are withdrawn, to be paid by direct deposit to a bank and account notified in writing to Bell by the Executive Director; and
  - b. The remainder payable by direct deposit in sums of \$10,000, with the second payment due on 10 January 2022 and the final payment due on 10 February 2022.

## The Proceedings in NCAT

22. Within 7 days of the Commencement Date, Bell will, make application to NCAT that the application for administrative review comprising the Proceedings is to be remitted pursuant to section 65(1) of the *Administrative Decisions Review Act 1997* (NSW).
23. Upon remittal to Fair Trading, the Refusal Decision and the Internal Review Decision will be withdrawn and no further action is to be taken in respect of the matters the subject of this Undertaking.
24. Upon notification by Fair Trading to Bell, Bell will take action to withdraw the Proceedings..

## Acknowledgements

25. Bell warrants that it has obtained independent legal advice in relation to this Undertaking and enters into this Undertaking voluntarily, without inducement and compulsion of any kind.
26. The Executive Director Investigations and Enforcement acknowledges that Bell had co-operated in resolving Fair Trading's concerns.
27. Bell and the Executive Director Investigations and Enforcement have agreed to resolve Fair Trading's concerns by the giving and accepting of the Undertaking in the terms contained in this Undertaking.
28. In accordance with section 218(2) of the ACL, Bell Solar may only withdraw from or vary this Undertaking with the written consent of the Executive Director, Investigations and Enforcement.
29. If the Executive Director Investigations and Enforcement considers that the Bell has contravened any of the terms of the Undertaking, the Executive Director Investigations and Enforcement will notify Bell in writing of the alleged contravention and provide a period of 30 days for Bell to rectify the contravention.
30. Where the contravention is not rectified within the specified period, the Executive Director

investigations and Enforcement may apply to the Supreme Court of New South Wales for an order under section 218(4) of the ACL in respect of that contravention.

31. Fair Trading will make this Undertaking available for inspection on the public register pursuant to section 86B of the FT 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.
32. This Undertaking in no way derogates from:
- a. the power of the Commissioner or the Executive Director Investigations and Enforcement to take any action in respect of a contravention of the HBA, the ACL, or any other legislation administered by the Minister, with the exception of the alleged contraventions identified in this Undertaking and any previous correspondence from Fair Trading to Bell in relation to its licence renewal; or
  - b. the rights and remedies available to any other person arising from the conduct the subject of this Undertaking.

#### Executed as an Undertaking

**EXECUTED by Bell Solar Pty Ltd**  
in accordance with section 127(1)  
of the Corporations Act 2001:



Signature of director

**Kiran Bhavsar**

Name of director

14 Dec 2021

Date

Accepted by NSW Fair Trading pursuant to section 218 of the Australian Consumer Law on:

\_\_\_\_\_

Date

16/12/21

and signed on behalf of NSW Fair Trading by the A/Executive Director, Investigations and Enforcement



Signature

**Rick Bultitude**