

**ENFORCEABLE UNDERTAKING UNDER  
THE AUSTRALIAN CONSUMER LAW (WA)**

BETWEEN

**NICHOLAS PAUL KAY**

AND

**COMMISSIONER FOR CONSUMER PROTECTION**

**RECITALS**

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WHEREAS:

- A. **NICHOLAS PAUL KAY** carries or carried on business as a supplier and installer of patios and garages under the unregistered business name 'Better Priced Patios' providing patio and garage installation services to consumers in Western Australia.
- B. This Enforceable Undertaking is accepted by the Commissioner for Consumer Protection ("**Commissioner**") under section 218 of the *Australian Consumer Law (WA)* and is enforceable under that section by a court upon the Commissioner's application.
- C. For the purpose of this Enforceable Undertaking:
  - 1. 'consumer' has the same meaning as it does under the *Fair Trading Act 2010 (WA)*;
  - 2. 'services' include (but are not limited to) the supply and installation of patio, shed, carport, garage, fencing, timber decking and other similar or related

products or services and includes actions taken to obtain required approvals from authorities in relation to those services;

3. 'installation' includes the provision of labour, advice, skill and materials and includes all preparatory and other works necessary for the supply of the services.

D. This Enforceable Undertaking is not confidential and may be published by the Commissioner.

## UNDERTAKING

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I, **NICHOLAS PAUL KAY**, upon this Enforceable Undertaking being accepted by the **COMMISSIONER, UNDERTAKE**, pursuant to section 218 of the *Australian Consumer Law (WA)*, that:

### Payments

1. I will make payments totalling \$33,000 to the Department of Mines, Industry Regulation and Safety, being:
  - 1.1. 41 monthly payments of \$800 on or before the last day of each month, the first payment to be made on or before 1 November 2021 and
  - 1.2. one fortnightly payment of \$400, the final payment to be made on or before 15 February 2025 (**Payments**).
2. The Payments are to be distributed to the following consumers in the following amounts:
  - 2.1. \$600 to [REDACTED]
  - 2.2. \$800 to [REDACTED]
  - 2.3. \$800 to [REDACTED]
  - 2.4. \$800 to [REDACTED]
  - 2.5. \$1,900 to [REDACTED]
  - 2.6. \$2,600 to [REDACTED]

- 2.7. \$3,500 to [REDACTED]
- 2.8. \$3,600 to [REDACTED]
- 2.9. \$3,800 to [REDACTED]
- 2.10. \$4,400 to [REDACTED]
- 2.11. \$4,800 to [REDACTED]
- 2.12. \$5,400 to [REDACTED]

3. The failure to make the Payments in accordance with clause 1 does not relieve me from the obligation to still make the Payments.

Future Services

4. I will not supply or agree to supply any services to a consumer without first providing to the consumer a written quotation setting out the total cost of the services, including:

- 4.1. the cost of materials;
- 4.2. the cost of labour;
- 4.3. the time within which the services are to be commenced;
- 4.4. the time within which the services are to be completed;
- 4.5. the cost of obtaining required approvals from local government and other authorities; and
- 4.6. any other costs, including fees, charges and taxes which will form part of the price paid by the consumer for the services.
- 4.7. a notice setting out the consumer's rights under sections 60 and 61 of the *Australian Consumer Law (WA)*.

5. I will not provide any services to a consumer, or accept any payment from a consumer in respect of the supply or agreement to supply services, unless I have first entered into a written agreement with the consumer setting out:

- 5.1. the cost of the services in accordance with clause 4;
- 5.2. the amount of any payment that the consumer must make prior to the supply of the services;

- 5.3. the date upon which the services will commence;
  - 5.4. the date upon which the services will be completed; and
  - 5.5. my contact details including my current business address and a telephone number that will be answered during normal business hours.
6. I will not accept any payment in respect of the supply of, or agreement to supply, services prior to the completion of the services unless:
    - 6.1. the amount is not excess of 10% of the total cost of the services; and
    - 6.2. I have complied with clause 5.
  7. Where I receive any payment from a consumer in respect of the supply, or agreement to supply services, I will provide to the consumer, and retain a copy of, a receipt for that payment.
  8. I will, in the event of any dispute arising in connection with the supply, or agreement to supply services, whether raised orally or in writing within fourteen (14) days:
    - 8.1. notify the Commissioner of the dispute;
    - 8.2. inform the consumer that the Commissioner has been notified of the dispute; and
    - 8.3. provide to the consumer a copy of this Enforceable Undertaking.
  9. I will commence and complete the services within the time agreed in writing in accordance with clause 5, but if those services cannot be completed within the time agreed in writing:
    - 9.1. I will, within 24 hours of becoming aware of any circumstances that will prevent me from being able to commence or complete the services within the time agreed in writing, inform the consumer:
      - 9.1.1. that I will not be able to commence and/or complete the services within the time agreed in writing; and
      - 9.1.2. of the date on which or the time within which, not being more than 14 days after the time agreed in writing, the services will be completed;

9.2. if the services are not supplied within 14 days of the time agreed in writing, I will, within 48 hours of the expiry of that time, refund in full to the consumer all payments already received from the consumer; and

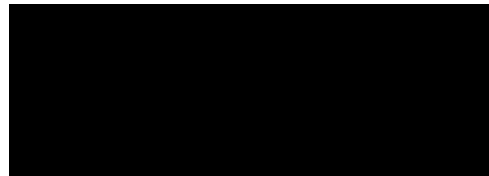
9.3. I will treat the fact of non-supply as a 'dispute' and I will take the steps referred to at clause 8 of this Enforceable Undertaking;

10. I will take all steps and do all things necessary to comply with these undertakings.

Signed for and on behalf of:

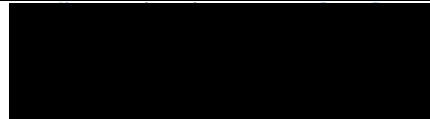
A. NICHOLAS PAUL KAY

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B. GARY NEWCOMBE

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COMMISSIONER FOR CONSUMER PROTECTION

DATE UNDERTAKING ACCEPTED

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