

**ASSURANCE***Fair Trading Act 1987*

Section 79

Assurance to the Commissioner for Consumer Affairs given for the purposes of section 79 of the *Fair Trading Act 1987* by:

CRS & SM Kirby Pty Ltd
and
Chad Robert Stephen Kirby

PERSONS GIVING THIS ASSURANCE

1. This Assurance is given to the Commissioner for Consumer Affairs (**Commissioner**) by CRS & SM Kirby Pty Ltd and Chad Robert Stephen Kirby in the state of South Australia for the purposes of section 79 of the *Fair Trading Act 1987* (SA) (**FTA**).

BACKGROUND

2. CRS & SM Kirby Pty Ltd (**CRS & SM**) is a proprietary company limited by shares, Australian Company Number (**ACN**) 150 890 305.
3. At all relevant times Chad Robert Stephen Kirby and Samantha Maree Kirby were directors of CRS & SM. Samantha Maree Kirby is no longer a director of CRS & SM.
4. CRS & SM is the holder of a Registered Land Agent's licence, RLA 261985, pursuant to the *Land Agents Act 1994* (**LA Act**) and is an agent under the LA Act.
5. Chad Robert Stephen Kirby is the holder of a Registered Land Agent's licence, RLA 252253, pursuant to the LA Act and is an agent under the LA Act.
6. CRS & SM have traded as Ray White Eyre Peninsula since June 2020, formerly trading as Elders Streaky Bay.
7. Chad Robert Stephen Kirby is the supervising land agent for CRS & SM.
8. As at August 2019, CRS & SM was authorised to sell a business known as Streaky Bay Newsagency (**the business**).
9. In the course of the sale of the business, Chad Robert Stephen Kirby represented CRS & SM as sales agent.
10. The business was sold on 2 August 2019 with Samantha Maree Kirby and Tara Nichole Brace and or nominees, listed as purchasers on the Business Sales Contract Schedule.
11. Samantha Maree Kirby and Tara Nichole Brace are directors of BEK Group Pty Ltd (**BEK Group**), a proprietary company limited by shares, ACN 635 260 552. Samantha Maree Kirby was a director of BEK Group as at 2 August 2019.
12. Australian Securities and Investments Commission holdings record BEK Group trading as Streaky Bay Newsagency, the business.

13. At all relevant times Chad Robert Stephen Kirby and Samantha Maree Kirby were legally married.

LAND AND BUSINESS (SALE AND CONVEYANCING) ACT and LAND AND BUSINESS (SALE AND CONVEYANCING) REGULATIONS 2010

14. Section 24G of the *Land and Business (Sales and Conveyancing) Act 1994 (LABSAC Act)* relevantly provides:

- 14.1. An agent who is authorised by a person (the vendor) to sell land or a business must not obtain, or be in any way concerned in obtaining, a beneficial interest in the land or business without approval of the Commissioner;
- 14.2. If an agent obtains a beneficial interest in land or a business that the agent is authorised to sell, the agent must not demand, receive or retain commission or expenses in respect of the sale or purchase of the land or business unless the Commissioner has approved obtaining the benefit and the receipt of the commission or expenses; and
- 14.3. A person (in this case an agent) is considered to obtain a beneficial interest in land or a business if the person or an associate of the person obtains a beneficial interest in the land or business.

15. "Associate of a person" is relevantly defined in section 24G of the LABCAC Act and means:

- 15.1. a relative (including a spouse (being persons who are legally married)); or
- 15.2. a body corporate if a director of the body corporate is a relative (including a spouse (being persons who are legally married)) of the person.

CONDUCT OF CONCERN

16. On 2 August 2019 Chad Robert Stephen Kirby and CRS & SM acted as agents for the sale of the business located at 9 Bay Road Streaky Bay to purchasers Samantha Maree Kirby and Tara Nichole Brace and or nominees, with the business to be owned and operated by BEK Group.
17. At the time of the sale Chad Robert Stephen Kirby and Samantha Maree Kirby were both directors of CRS & SM.
18. At the time of the sale Samantha Maree Kirby was a director of BEK Group.
19. At all relevant times Chad Robert Stephen Kirby and Samantha Maree Kirby were legally married.
20. CRS & SM and Chad Robert Stephen Kirby did not, in respect of the sale of the business, make an application to the Commissioner in accordance with regulation 25 of the *Land and Business (Sale and Conveyancing) Regulations 2010* for approval as required by section 24G of the LABCAC Act to obtain a beneficial interest in the business.

CONTRAVENTIONS

21. The Commissioner considers, and CRS & SM and Chad Robert Stephen Kirby acknowledge, that it is likely that CRS & SM and Chad Robert Stephen Kirby have contravened section 24G of the LABSAC Act by the conduct referred to in paragraphs 16 to 20 above.

ASSURANCE BY CRS & SM KIRBY PTY LTD and CHAD ROBERT STEPHEN KIRBY FOR THE PURPOSES OF SECTION 79 OF THE FAIR TRADING ACT 1987 (SA)

22. In response to the concerns raised by CBS on behalf of the Commissioner, CRS & SM and Chad Robert Stephen Kirby hereby provide an Assurance to the Commissioner that CRS & SM and Chad Robert Stephen Kirby will comply with all obligations under the LABSAC Act.

COMMENCEMENT OF ASSURANCE

23. This Assurance comes into effect when:

- 23.1. the Assurance is executed by Chad Robert Stephen Kirby in his personal capacity and as the director of CRS & SM; and
- 23.2. the Commissioner accepts the Assurance so executed.

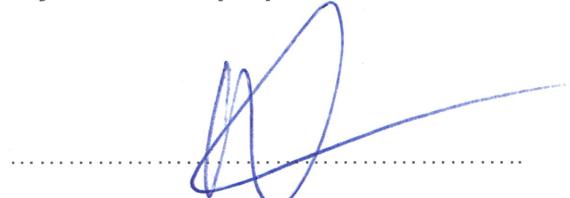
ACKNOWLEDGEMENTS

24. CRS & SM and Chad Robert Stephen Kirby acknowledge that:

- 24.1. it is an offence to breach an Assurance as set out in section 81 of the FTA;
- 24.2. CBS will make this Assurance publically available including by publishing it on the public register of assurances on the CBS website;
- 24.3. CBS may, from time to time, make public reference to the Assurance including in news media statements and in CBS publications;
- 24.4. this Assurance in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
- 24.5. this Assurance may be produced to any Court in respect of any proceedings alleging any future contraventions of the FTA or a related Act.

OFFICIAL

EXECUTED BY Chad Robert Stephen Kirby for self and as director of CRS & SM Kirby Pty Ltd for the purposes of this Assurance



Chad Robert Stephen Kirby

Date..... 7/9/22 .

Accepted by the Commissioner for Consumer Affairs (SA) pursuant to section 79 of the Fair Trading Act 1987



Commissioner for Consumer Affairs (SA)

Date... 20/09/2022