

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

AND

National Consumer Credit Protection Act 2009

Section 322

The commitments in this undertaking are offered to the Australian Securities and Investments Commission by:

Mark John Kelly

Address redacted pursuant to ASIC's RG100

1. Definitions

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

ACL means an Australian Credit Licence;

AFSL means an Australian Financial Services Licence;

AHL means Advanced Home Loans Pty Ltd ACN 099 944 626;

ASIC means the Australian Securities and Investments Commission;

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth);

charges means the charges preferred against Mr Kelly by the QPS, details of which are set out at paragraph 2.2.2 of this Enforceable Undertaking;

Corporations Act means the *Corporations Act 2001* (Cth);

Corporations Regulations means the *Corporations Regulations 2001* (Cth);

Court means the District Court of Queensland (or such other court, including an appeal court) before which the charges will be heard and determined;

Credit Act means the *National Consumer Credit Protection Act 2009* (Cth);

Criminal Code means The Criminal Code attached as Schedule 1 to the *Criminal Code Act 1899* (Qld);

Mr Kelly means Mark John Kelly;

QPS means Queensland Police Service; and

Relevant Period means 22 March 2010 to 28 April 2011.

2. Background

2.1 ASIC's role

2.1.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

2.2 Details of Conduct

2.2.1 On 27 January 2014 Mr Kelly was charged by the QPS with three counts of contravening section 408C (Fraud) of the Criminal Code and 35 counts of contravening section 398 (Stealing) of the Criminal Code (**the charges**). The charges relate to Mr Kelly's alleged dishonest conduct involving loans from a number of financial institutions.

2.2.2 Specifically, the charges preferred by the QPS against Mr Kelly are as follows:

- (a) Charge 1 - That between the 22nd day of March 2010 and the 11th day of May 2010 at Brisbane City in the State of Queensland one Mark John Kelly dishonestly obtained a sum of money namely \$350000 from Bank of Queensland;
- (b) Charge 2 – That between the 22nd day of March 2010 and the 29th day of May 2010 at Brisbane City in the State of Queensland one Mark John Kelly dishonestly obtained a sum of money namely \$98000 from Bank of Queensland;
- (c) Charge 3 – That between the 1st day of November 2010 and the 17th day of December 2010 at Brisbane City in the State of Queensland one Mark John Kelly dishonestly obtained a sum of money namely \$450000 from Latrobe Financial;
- (d) Charge 4 – That on the 22nd day of March 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (e) Charge 5 – That on the 23rd day of March 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (f) Charge 6 – That on the 24th day of March 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (g) Charge 7 – That on the 25th day of March 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (h) Charge 8 – That on the 28th day of March 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (i) Charge 9 – That on the 29th day of March 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;

- (j) Charge 10 – That on the 30th day of March 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (k) Charge 11 – That on the 31st day of March 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (l) Charge 12 – That on the 1st day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (m) Charge 13 – That on the 2nd day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (n) Charge 14 – That on the 3rd day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (o) Charge 15 – That on the 4th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (p) Charge 16 – That on the 5th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (q) Charge 17 – That on the 6th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (r) Charge 18 – That on the 7th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (s) Charge 19 – That on the 8th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (t) Charge 20 – That on the 9th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (u) Charge 21 – That on the 10th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (v) Charge 22 – That on the 11th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (w) Charge 23 – That on the 12th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;

- (x) Charge 24 – That on the 13th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (y) Charge 25 – That on the 14th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (z) Charge 26 – That on the 15th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (aa) Charge 27 – That on the 16th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (bb) Charge 28 – That on the 18th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (cc) Charge 29 – That on the 19th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (dd) Charge 30 – That on the 20th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (ee) Charge 31 – That on the 21st day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (ff) Charge 32 – That on the 22nd day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (gg) Charge 33 – That on the 23rd day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (hh) Charge 34 – That on the 24th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (ii) Charge 35 – That on the 25th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (jj) Charge 36 – That on the 26th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank;
- (kk) Charge 37 – That on the 27th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank; and

- (II) Charge 38 – That on the 28th day of April 2011 at Brisbane City in the State of Queensland one Mark John Kelly stole a sum of money namely \$5000 the property of ANZ Bank.

2.3 ASIC's investigation

- 2.3.1 On 29 April 2014 ASIC received information from the QPS disclosing that Mr Kelly was the subject of the charges. As a result of receiving this information, ASIC commenced an investigation on 29 May 2014.
- 2.3.2 ASIC's investigations revealed the following in relation to Mr Kelly.
- (a) Between 16 December 2010 to 1 February 2013, AHL was an Australian Credit Licensee (389468);
 - (b) Between 28 June 2010 and 16 December 2010 AHL was a Credit Registered Person and Mr Kelly was nominated as a person operating under that designation; and
 - (c) Between 10 August 2007 and 1 July 2010 Mr Kelly was a director of AHL.
 - (d) Between 28 June 2005 and 12 March 2012 Mr Kelly was an Authorised Representative (289840) of Australian Life Insurance Distribution Pty Ltd, an Australian Financial Services Licensee (226403).

2.4 ASIC's concerns

- 2.4.1 The charges concern serious offences of dishonesty alleged against Mr Kelly.
- 2.4.2 Due to the serious nature of the charges, ASIC believes it is not appropriate for Mr Kelly to provide financial services or engage in credit activity until the outcome of the charges is known.

2.5 Acknowledgement of concerns

- 2.5.1 Mr Kelly acknowledges the concerns held by ASIC, as stated in paragraph 2.4, and considers that those concerns are reasonable.

2.6 Undertakings

Under section 93AA of the ASIC Act

- 2.6.1 Under section 93AA of the ASIC Act, Mr Kelly has offered, and ASIC has agreed to accept the following undertakings.
- (a) From the date this Enforceable Undertaking is accepted by ASIC and until 30 days after the expiration of any appeal period that may apply in relation to the Court dealing with the charges:
 - (i) Mr Kelly will not seek to be appointed as an Authorised Representative of any AFSL holder;
 - (ii) Mr Kelly will not seek to be appointed as a director of any company that is an AFSL holder or an Authorised Representative of an AFSL holder;

- (iii) Mr Kelly will not apply for an AFSL; and
- (iv) Mr Kelly will not be employed in any capacity in which he is likely to be dealing or otherwise engaged with the provision of financial services as defined in the Corporations Act.

Under section 322 of the Credit Act

2.6.2 Under section 322 of the Credit Act, Mr Kelly has offered, and ASIC has agreed to accept the following undertakings.

- (a) From the date this Enforceable Undertaking is accepted by ASIC and until 30 days after the expiration of any appeal period that may apply in relation to the Court dealing with the charges:
 - (i) Mr Kelly will not seek to be appointed as a Credit Representative of any ACL holder;
 - (ii) Mr Kelly will not seek to be appointed as a director of any company that is an ACL holder or a Credit Representative of an ACL holder;
 - (iii) Mr Kelly will not apply for an ACL; and
 - (iv) Mr Kelly will not be employed in any capacity in which he is likely to be engaging in credit activity as defined in the Credit Act.

3. Acknowledgements

3.1 Mr Kelly acknowledges that ASIC:

- (a) may issue a media release on execution of this Enforceable Undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (b) may from time to time, in any manner it considers to be reasonable, publicly refer to or report upon this Enforceable Undertaking, without further reference to Mr Kelly; and
- (c) will make this Enforceable Undertaking available for public inspection.

3.2 Further Mr Kelly acknowledges that:

- (a) ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's power to further investigate the alleged contraventions the subject of ASIC's concerns in this Enforceable Undertaking or any other conduct of Mr Kelly (whether within the Relevant Period or otherwise) and to take any other action it is legally entitled to take;
- (b) ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil penalty order in relation to any contravention not the subject of ASIC's concerns in this Enforceable Undertaking or arising from future conduct; and

(c) this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Enforceable Undertaking or arising from future conduct.

3.3 Mr Kelly acknowledges that ASIC had reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms of paragraphs 3.1 and 3.2.

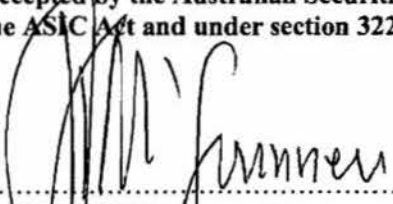
3.4 Mr Kelly acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC, and Mr Kelly and ASIC acknowledge that the date of this Enforceable Undertaking is the date on which it is accepted by ASIC.

Signature redacted pursuant to ASIC's RG100

Mark John Kelly

Dated: 2/12/14

Accepted by the Australian Securities and Investments Commission under section 93AA of the ASIC Act and under section 322 of the Credit Act by its duly authorised delegate:


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David McGuinness
Delegate of Australian Securities and Investments Commission

Dated: 4/12/2014