



*Australian Securities and Investments Commission*

**ENFORCEABLE UNDERTAKING**

**AUSTRALIAN SECURITIES AND INVESTMENT COMMISSION ACT**

**SECTION 93AA**

The commitments in the Enforceable Undertaking are offered to the Australian Securities and Investment Commission ("ASIC") by:-

**Stuart Gloucester Membery**  
**3/67 Cremorne Road**  
**Cremorne Point**  
**NSW 2090**

**1. BACKGROUND**

**Stuart Membery Pty Limited (in liquidation) ACN 066 457 556**

- 1.1 Stuart Membery Pty Limited (in liquidation) ACN 066 457 556 was registered on 15 September 1994.
- 1.2 On 10 October 1997 it was placed into liquidation by resolution of creditors.
- 1.3 Mr Membery was at the date the company went into liquidation the sole director.
- 1.4 The Official Liquidator in his Report pursuant of Section 533 of the Corporations Law dated 26 May 1999 reported:
  - (a) the company under Mr Membery's management was unable to pay its unsecured creditors more than fifty cents in the dollar;
  - (b) as a director, Mr Membery failed to prevent the company from incurring debts when it was insolvent;
  - (c) as a director, Mr Membery failed to exercise a reasonable degree of care and diligence;
  - (d) as a director Mr Membery undertook various related party transactions for personal expenses resulting in amounts owing to the company that are unlikely to be recovered;
  - (e) as a director Mr Membery failed to provide a Report as to Affairs; and
  - (f) as a director of this company and Stuart Membery Retail Pty Limited Mr Membery had only one bank account for the two companies.

**Stuart Membro Retail Pty Limited (in Liq), ACN 070 106 884**

- 1.5 Stuart Membro Retail Pty (in liquidation) ACN 070 106 004 was registered on 28 June 1995.
- 1.6 On 10 October 1997, it was placed into liquidation by resolution of creditors.
- 1.7 Mr Membro was at the date the company went into liquidation the sole director.
- 1.8 The Liquidator in his Report pursuant to section 533 of Corporations Law dated 4 November 1997 reported:
  - (a) the company under Mr Membro's management was unable to pay its unsecured creditors more than fifty cents in the dollar;
  - (b) as a director, Mr Membro failed to prevent the company from trading whilst insolvent;
  - (c) as a director Mr Membro failed to exercise a reasonable degree of care and diligence;
  - (d) as a director Mr Membro failed to provide a Report as to Affairs; and
  - (e) as a director of this company and Stuart Membro Pty Limited, Mr Membro had only one bank account for the two companies.

**Memden Pty Limited (in liquidation) ACN 054 630 241**

- 1.9 Memden Pty Limited (in liquidation) ACN 054 630 241 was registered on 19 December 1991.
- 1.10 On 13 December 1993, it was placed into liquidation by resolution of creditors.
- 1.11 Mr Membro was a director at the date the company went into liquidation.
- 1.12 The Liquidator in his report pursuant to section 533 of the Corporations Law dated 2 June 1994 reported:
  - (a) the company under Mr Membro's management was unable to pay its unsecured creditors more than 50 cents in the dollar; and
  - (b) as a director Mr Membro allowed the company to incur debts knowing or having reasonable grounds to suspect it was insolvent.
- 1.13 On 20 December 1999, ASIC invited Mr Membro to address the above areas of concern and also comment on the fact that he was a director of two further companies that went into liquidation or were deregistered namely: Stuart Membro Designs Pty Ltd, ACN 00 556 952 and Stuart Membro Pty Ltd, ACN 002 790 829.
- 1.14 On 16 March 2000 Mr Membro attended a hearing and presented submissions in response to these areas of concern.

- 1.15 While Mr Membery submitted that there were contributing factors outside his control that lead to the companies going into liquidation, he also accepted that he did not fulfil his duties as a director in that:
- (a) he was not sufficiently informed as to the financial affairs of the above companies;
  - (b) he signed documents concerning the above companies without fully reading or understanding them; and
  - (c) he did not take sufficient steps to satisfy himself that the person charged with the duty of preparing the above companies books and records was a competent and reliable person and was discharging that duty.
- 1.16 On that basis, as an alternative to ASIC prohibiting Mr Membery from managing a corporation under Section 600 (3) of the Corporations law, Mr Membery gives the undertakings referred to in Section 2 below.

## **2. UNDERTAKINGS**

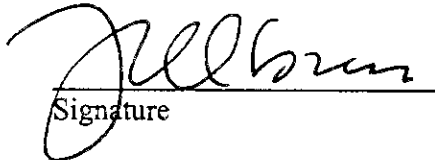
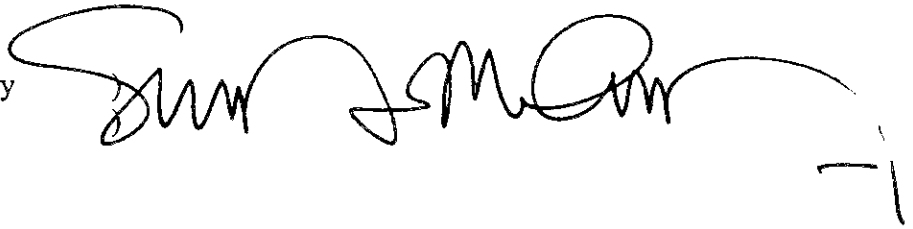
- 2.1 Pursuant to section 93AA of the ASIC Act, Mr Membery undertakes that from the date on which this Enforceable Undertaking is accepted:
- (a) he will not manage a corporation (as defined in s91A(2) of the Law) for a period of three (3) years;
  - (b) he will not apply to ASIC to be a director of any corporation for a period of three (3) years
  - (c) he will not apply to ASIC to be a company secretary of any corporation for a period of three (3) years, and
  - (d) prior to commencing the management of a corporation or making any application to ASIC to be a director or secretary of a corporation, he will provide certification to ASIC that he has satisfactorily completed a corporate management training course which has been pre-approved by ASIC as being a suitable course.

## **3. ACKNOWLEDGMENTS**

- 3.1 Mr Membery acknowledges that he has obtained legal advice in relation to the content and effect of this Enforceable Undertaking.
- 3.2 Mr Membery acknowledges that ASIC:
- (a) may issue a media release on execution of this Enforceable Undertaking referring to its terms and the concerns of ASIC which led to its execution;
  - (b) may from time to time publicly refer to this Enforceable Undertaking;
  - (c) will make this Enforceable Undertaking available for public inspection.

- 3.3 Mr Membery acknowledges that this Enforceable Undertaking in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in this Enforceable Undertaking.
- 3.4 Mr Membery acknowledges that ASIC's acceptance of an Enforceable Undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in respect thereof.
- 3.5 Mr Membery acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC.

Signed by Mr Stuart Membery  
in the presence of:

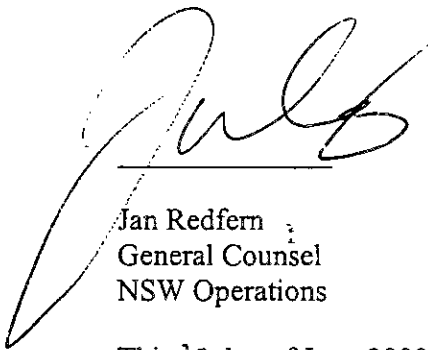


Signature

J. W. OSBORNE  
Name (printed)

Level 14, 60 Castlereagh St  
Address Sydney NSW 2000

ACCEPTED BY THE AUSTRALIAN SECURITIES & INVESTMENTS  
COMMISSION PURSUANT TO ASIC ACT S93AA BY ITS DULY AUTHORISED  
DELEGATE:



Jan Redfern  
General Counsel  
NSW Operations

This 20 day of June 2000

