

Enforceable Undertaking

Australian Securities & Investments Commission

Section 93AA *Australian Securities & Investments Commission Act 2001*

The commitments in this Enforceable Undertaking are offered to the Australian Securities & Investments Commission (ASIC).

Mortgage Point Pty Ltd ACN 094 897 604 (**Mortgage Point**)
Suite 3
54-58 Garden Street
SOUTH YARRA VIC 3141

1. Background

- 1.1 At all material times, Mortgage Point was engaged in the business of providing the services of a Mortgage Originator (also known as Mortgage Finance Intermediary or Mortgage Introducer). Mortgage Point currently has Agency Agreements with 24 agents who act on its behalf to write mortgages for borrowers with the panel of lenders. Mortgage Point is paid commissions by the lenders on all the mortgages written and these commissions are passed on to the relevant agent pursuant to the Agency Agreements.
- 1.2 ASIC is responsible for monitoring and promoting consumer protection in relation to financial services, and under s12GD of the *Australia Securities & Investments Commission Act 2001 (Act)*, ASIC may seek injunctive relief in respect of a contravention of the Act. ASIC may also commence proceedings for compensation on behalf of consumers who have suffered loss or damage as a result of a contravention of the Act (s12GM) and seek non-punitive orders such as a community service order or an order requiring publication of an advertisement (s12GLA).
- 1.3 Mortgage Point has been a member of the Mortgage Industry Association of Australia since 10 July 2002 and offers a financial service in relation to a financial product in the course of trade or commerce as defined by s12BAB and s12BAA(7) of the Act.
- 1.4 During the period from 1 October 2001 to 16 June 2004 (**period**) Mortgage Point published or caused to be published 8 one page brochures, which were available for Mortgage Point customers (**brochures**).
- 1.5 These eight brochures used by Mortgage Point contained the following statements (**Statements**):
 - "impartial and unbiased loan advisory service"
 - "free unbiased advice"
 - "independent mortgage broker"
 - "independent broker"
 - "independent advice"

- "unbiased, personalised and professional service".
- 1.6 Mortgage Points agents Susy Bessell and Terri Di Renzo each prepared one brochure but did not distribute their brochures to any customers. Mortgage Point agent Malcolm Debono prepared three of the brochures and distributed a small number of brochures but did not write any loans with recipients of the brochures. Mortgage Point agent Craig Rahilly prepared one brochure and distributed a small number of brochures but did not write any loans with recipients of the brochures. Mortgage Point agent Mark Osborne prepared one brochure and distributed this brochure to a small number of clients and did write some loans with recipients of the brochure.
 - 1.7 Mortgage Point receives commissions or other payments from lenders who are on a panel of lenders that Mortgage Point deals with (**Panel**). Mortgage Point does not provide home loan advice in relation to nor receive commission from lenders who are not on the Panel.
 - 1.8 ASIC has formed the view that, in the absence of an adequate qualification that the advice given by Mortgage Point is confined to referring borrowers to lenders on the Panel, the Statements are false or misleading, misleading or deceptive, and/or are likely to mislead and deceive in contravention of s12DA and s12DB of the Act, in that they suggested that the advice given by Mortgage Point and its agents is not limited to any number or group of lenders and they fail to disclose that Mortgage Point and its agents have contractual arrangements under which commissions are received from those lenders on the Panel.
 - 1.9 Mortgage Point acknowledges ASIC's concerns and has offered ASIC this Enforceable Undertaking, which ASIC has agreed to accept.
 - 1.10 Mortgage Point has now ceased using all brochures and promotional material that contain any of the Statements or similar statements.

2. Undertakings

Pursuant to s93AA of the Act, Mortgage Point provides the undertakings set out below.

Disclosure and corrective action

- 2.1 Mortgage Point will not use any of the Statement or any similar statements in any future advertising or promotional material.
- 2.2 Within 30 days of entering into this Enforceable Undertaking, Mortgage Point will send a written notice in the form set out in Annexure 1, to all Mortgage Point customers whose identity and address is known to Mortgage Point at the date of this Enforceable Undertaking; who have entered into a finance agreement through Mortgage Point during the period and who were customers of the following Mortgage Point agent:

Mark Osborne
- 2.3 Where the address of any of the customers referred to in paragraph 2.2 above is not known to Mortgage Point, then Mortgage Point will comply with the procedure set out in Annexure 5 and will send a letter in the form of Annexure 1 if this is required within 14 days of obtaining the requisite address information.
- 2.4 Mortgage Point will provide reasonable assistance to all Mortgage Point customers who claim, or inquire about a potential claim for loss or damage by reason of the Statements. Reasonable assistance will include the provision of information about alternative or comparative financing

options that were available in the market generally at the relevant time, including the commissions payable to Mortgage Point under each option.

- 2.5 If Mortgage Point receives a claim (“**compensation claim**”) from a customer (“**claimant**”) for loss or damage suffered by reason of the Statements, Mortgage Point will consider the compensation claim and:
- (a) if Mortgage Point accepts that the compensation claim is wholly valid, Mortgage Point will pay the compensation claim, within 28 days of receiving the compensation claim;
 - (b) if Mortgage Point does not accept that the compensation claim is valid at all, it will within 28 days of receiving the compensation claim send a written notice to the claimant in the form of Annexure 2; or
 - (c) if Mortgage Point accepts that the compensation claim is partly valid, it will within 28 days of receiving the compensation claim send a written notice to the claimant in the form of Annexure 3, and at the same time pay that part of the compensation claim that it accepts as valid.
- 2.6 If either clause 2.5(b) or (c) applies, Mortgage Point will provide the claimant with all reasonable assistance to facilitate the referral of the compensation claim to the Credit Ombudsman Scheme Limited and take all reasonable steps to ensure that the referral proceeds expeditiously.

Compliance program

- 2.7 Mortgage Point will immediately upon executing this Enforceable Undertaking conduct an internal review of its advertising and promotional program to determine whether any of its current or proposed advertising and promotional material contain statements that are false and misleading, or that are, or are likely to be, misleading and deceptive. This internal review is to be completed within 60 days.
- 2.8 With 35 days of the completion of the review, Mortgage Point will provide a report to ASIC, signed by a senior officer or officers of Mortgage Point who has or have personal knowledge of the matters referred to in clause 2.7, that sets out the results of the internal review (**internal report**).
- 2.9 If the internal report discloses any problems or errors, Mortgage Point will use its best endeavours to correct those problems or errors and report to ASIC on the steps taken to correct the problems or errors within 14 days.
- 2.10 Mortgage Point will implement within 90 days of the date of this Enforceable Undertaking and maintain for a period of 3 years, a Compliance Program (**Compliance Program**) in accordance with the Australian Standard for Compliance Programs AS-3806. The Compliance Program will have the features set out in Annexure 4 to this Enforceable Undertaking.
- 2.11 Within 45 days of the implementation of the Compliance Program, Mortgage Point will appoint a Compliance Officer (the **Compliance Officer**) to:
- (a) ensure that the Compliance Program has been properly implemented (**review**);
 - (b) conduct further reviews of the Compliance Program, 12 and 24 months after the implementation;
 - (c) meet all the remaining requirements of Annexure 4.

- 2.12 Mortgage Point will take immediate steps to remedy any deficiencies in the implementation and maintenance of the Compliance Program identified by the Compliance Officer.

Education Program

- 2.13 Within 30 days of the date of this Enforceable Undertaking, Mortgage Point will pay \$2,500 to ASIC, to be used by ASIC for consumer education or similar programs in relation to the finance and mortgage broking industry (the nature, form and content of which are to be wholly determined by ASIC).
- 2.14 Mortgage Point will not make any public statements about the payment made or to be made pursuant to clause 2.13 without reference to the obligation on Mortgage Point to make that payment pursuant to this Enforceable Undertaking.

Notices

- 2.15 Any notice or other document required to be provided to ASIC pursuant to this Enforceable Undertaking, shall be given in writing and addressed to:

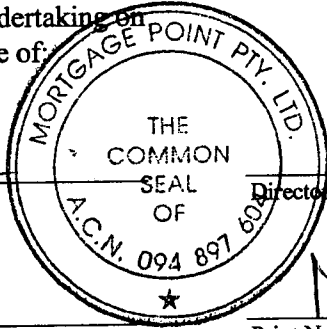
The Director
 Compliance & Campaigns
 Consumer Protection & International
 Australian Securities and Investments Commission
 GPO Box 9827
 Sydney NSW 2001

3. Acknowledgments

- 3.1 Mortgage Point 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 publicly refer to this Enforceable Undertaking; and
 - (c) will make this Enforceable Undertaking available for public inspection.
- 3.2 Mortgage Point acknowledges that 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.
- 3.3 Mortgage Point 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.
- 3.4 Mortgage Point acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC.

The Common Seal of Mortgage Point Pty Ltd was affixed to this Enforceable Undertaking on 7/05 December 2004 in the presence of:

Craig Ral
Witness



[Handwritten signature]
Director

CRAIG RAHILLY
Print Name

MARK OSBORN
Print Name

Accepted by the Australian Securities and Investments Commission pursuant to the ASIC Act section 93AA by its duly authorised delegate:

Mark Steward
Deputy Executive Director Enforcement
Delegate of the Australian Securities and Investments Commission

Dated this 23rd day of February 2005

Annexure 1**NOTICE TO CUSTOMERS OF MORTGAGE POINT PTY LTD**

In the period from 1 October 2001 to 16 June 2004, **Mortgage Point Pty Ltd ACN 094 897 604** (called "Mortgage Point"), used advertising and promotional material that contained the following statements ("the Statements"):

- "impartial and unbiased loan advisory service"
- "free unbiased advice"
- "independent mortgage broker"
- "independent broker"
- "independent advice"
- "unbiased, personalised and professional service"

The Australian Securities and Investments Commission ("ASIC") has brought to our attention the fact that these statements are incorrect for the following reasons:

- Mortgage Point compared the products of no more than 33 lenders (which include the major Australian banks) who are a panel of lenders that Mortgage Point uses ("the Panel").
- Mortgage Point receives commissions from those lenders.
- Mortgage Point has an agreement with a number of independent agents and their remuneration includes salaries, bonuses and commissions.
- Mortgage Point receives different rates of commission and benefits depending on the lender to whom a borrower is referred.
- Mortgage Point does not receive commissions or other benefits from lenders who are not on the Panel.
- Mortgage Point does not refer borrowers to lenders who are not on the Panel

If you believe that you have suffered loss or damage by reason of any of the Statements, you may be entitled to receive compensation from Mortgage Point and should forward all details of that claim together with copies of documents supporting your claim to Mortgage Point at the address below. Mortgage Point will consider and, if appropriate, pay a claim for loss or damage suffered by reason of the Statements.

Mortgage Point has agreed with ASIC to provide reasonable assistance to all Mortgage Point customers who claim or inquire about any potential claim, for loss or damage. Reasonable assistance includes the provision of information about alternative or comparative financing options, including the commissions payable to Mortgage Point under each option. If you require further information to determine whether you have a claim or the amount of such claim, you should set out the information that you require and forward your request to:

Mortgage Point
3/ 54-58 Garden Street
SOUTH YARRA
VIC 3141

Annexure 2**NOTICE OF REJECTION OF COMPENSATION CLAIM**

You have made a claim for compensation in response to a notice provided to you by Mortgage Point Pty Ltd ("Mortgage Point").

Your compensation claim is for loss or damage that you allege to have suffered as a customer of Mortgage Point, by reason of the following statements ("**the Statements**") made in promotional material used by Mortgage Point during the period 1 October 2001 to 16 June 2004:

- "impartial and unbiased loan advisory service"
- "free unbiased advice"
- "independent mortgage broker"
- "independent broker"
- "independent advice"
- "unbiased, personalised and professional service"

Mortgage Point has considered your compensation claim and formed the view that:

- The Statements were not made to you.
- You did not rely upon the Statements.
- You did not suffer any loss or damage by reason of the Statements.

Accordingly your compensation claim has been rejected and the reasons for the rejection are attached.

If you disagree with the assessment of your claim, you may refer the matter to the Credit Ombudsman Service Limited (COSL). COSL is a free and independent complaints handling service which deals with complaints about mortgage brokers including Mortgage Point. The contact details are:

COSL

Freecall 1300 78 08 08

Fax 02 9267 3125

Level 6, 50 Park Street

Sydney

NSW, 2000

www.creditombudsman.com.au

Alternatively you may wish to pursue your own legal action. You should seek your own legal advice about that. If you wish to discuss the rejection of your claim you may contact Mortgage Point on

Mortgage Point

3/ 54-58 Garden Street

SOUTH YARRA

VIC 3141

Annexure 3**NOTICE OF REJECTION OF PART OF COMPENSATION CLAIM**

You have made a claim for compensation in response to a notice provided to you by Mortgage Point Pty Ltd ("Mortgage Point").

Your compensation claim is for loss or damage that you allege to have suffered as a customer of Mortgage Point, by reason of the following statements ("**the Statements**") made in promotional material used by Mortgage Point during the period 1 October 2001 to 16 June 2004:

- impartial and unbiased loan advisory service"
- "free unbiased advice"
- "independent mortgage broker"
- "independent broker"
- "independent advice"
- "unbiased, personalised and professional service"

Mortgage Point has considered your compensation claim and formed a view that you did not suffer loss or damage to the extent claimed in the compensation claim.

Accordingly part of your compensation claim has been rejected and the reasons for the rejection are attached.

A cheque is attached for that part of your compensation claim that has been accepted.

If you disagree with the assessment of your claim, you may refer the matter to the Credit Ombudsman Service Limited (COSL). COSL is a free and independent complaints handling service which deals with complaints about mortgage brokers including Mortgage Point. The contact details are:

COSL

Freecall 1300 78 08 08

Fax 02 9267 3125

Level 6, 50 Park Street

Sydney

NSW, 2000

www.creditombudsman.com.au

Alternatively you may wish to pursue your own legal action. You should seek your own legal advice about that. If you wish to discuss the rejection of your claim you may contact Mortgage Point on

Mortgage Point

3/ 54-58 Garden Street

SOUTH YARRA

VIC 3141

Annexure 4

The Compliance Program to be implemented and maintained by Mortgage Point according to this Enforceable Undertaking ('the program') must have the following features:

1. The program must comply with the Australian Standard on Compliance Programs, AS 3806, except where that Standard is inconsistent with the other provision in this Annexure, in which case the provisions of this Annexure will prevail.
2. The program must provide for the appointment of a Compliance Officer.
3. The program must require the Compliance Officer to review all advertising material to be used by Mortgage Point, in any medium and including promotional material for in-store display. The review must be carried out prior to the use, publication, broadcast or display of the advertising material to ensure that the use of the advertising material will not contravene Part 2, Division 2 of the *Australian Securities & Investments Commission Act 2001* ('the *ASIC Act*').
4. The program must require the Compliance Officer to maintain for at least 3 years a documentary record of the review of all such advertising material. The record must include:
 - (a) a written identification of the advertising material that was reviewed;
 - (b) a copy of the advertising material;
 - (c) a written confirmation that the advertising material was reviewed and approved for use, publication, broadcast or display, stating when and by whom the review was conducted and the approval was given;
 - (d) a written record of any ways in which the use of the advertising material was considered by the Compliance Officer to give rise to possible contraventions of Part 2, Division 2 of the *ASIC Act*, and the steps taken to avoid such possible contraventions; and
 - (e) a written record of when the advertising material was used, published, broadcast or displayed.
5. The program must provide for:
 - (a) the conducting of annual training sessions in relation to sections 12DA and 12DB of the *ASIC Act* for all employees and agents of Mortgage Point who are involved from time to time in the design, preparation, distribution or use of advertising material;
 - (b) the making and retention for at least 3 years of written records of the person who conducted, and who attended, each such training session; and
 - (c) the retention for at least 3 years of copies of all material that was used or distributed at each such training session.
6. The program must provide for:
 - (a) a Compliance Officer approved by ASIC, with experience in Part 2 Division 2 *ASIC Act* 2001 to audit the implementation of the program at the following intervals from the date of the execution of this Enforceable Undertaking; 12 months and 24 months;
 - (b) the Compliance Officer approved by ASIC to provide written reports to the Board of Mortgage Point and ASIC in relation to the above audits; and
 - (c) the retention by Mortgage Point for at least 3 years of such audit reports.

Annexure 5**Change of Address Procedure**

1. Mortgage Point must send the letter at Annexure 1 by ordinary pre-paid post to the most recent address that Mortgage Point has recorded for each relevant person.
2. In the case of those persons whose letter is returned, Mortgage Point must update the addresses they have for such persons by using the "National Change of Address" database provided by Australia Post. If Australia Post's "National Change of Address" database reveals a different address for those persons, Mortgage Point will send the item by ordinary pre-paid post to that different address.
3. Where Australia Post notifies Mortgage Point that a person has changed address, but has not given their consent to Australia Post to the release of their new details, Mortgage Point will use the "Re-Connect" service provided by Australia Post to seek to obtain that new address. Prior to doing so, Mortgage Point will consult with ASIC and Australia Post on the content of any correspondence to be sent to persons using the "Re-Connect" service. Australia Post's "Re-Connect" service is a service whereby Australia Post writes to relevant persons advising them that Mortgage Point is trying to contact them, and asking for their consent to the release of their new address. When using the "Re-Connect" service, Mortgage Point will request that Australia Post notify the person that the purpose of the proposed communication relates to "possible compensation payable to you arising from an Enforceable Undertaking made to the Australian Securities & Investments Commission". In the event that:
 - 3.1. The person consents to the release of their new address to Mortgage Point, Mortgage Point will send the item by ordinary pre-paid post to that different address.
 - 3.2. The person does not consent to the release of their new address to Mortgage Point, Mortgage Point is not required to send the item to that person.
4. If Australia Post's "Change of Address" database and Australia Post's "Re-Connect" service reveal no different addresses for those persons whose mail-out is returned, Mortgage Point will carry out an internet search of the Telstra White Pages On-Line at the domain name www.whitepages.com.au. In the event that:
 - 4.1. An entry which includes an address is found and that entry appears on reasonable grounds to correspond with the person sought – Mortgage Point must send the item by ordinary pre-paid post to that different address.
 - 4.2. No entry which includes an address is found which appears on reasonable grounds to correspond with the person sought – Mortgage Point is not required to send the item by ordinary pre-paid post to that different address.