

ENFORCEABLE UNDERTAKING



The commitments in this Enforceable Undertaking are offered to the Australian Securities and Investments Commission ('ASIC') by:

Mortgage Choice Limited ACN 009 161 979 ('**Mortgage Choice**'), at Level 7, 182-186 Blues Point Road, New South Wales, 2060.

1. BACKGROUND

- 1.1 Mortgage Choice is engaged in the business of franchising mortgage brokers, in the course of which it provides advice in relation to mortgage products offered by the financial institutions and other lenders appointed to its panel ('**Panel**'). The Panel comprises 27 members who, in the 12 months ended 31 December 2003, accounted for approximately 80% of the total home loan market by value in Australia.
- 1.2 Mortgage Choice provides services to consumers, through a network of approximately 370 separately and independently owned businesses ('**Franchisees**'), which are established and operate under franchise arrangements with Mortgage Choice. These arrangements are subject to detailed contracts with each Franchisee, including a Franchise Agreement, and an Operations Manual.
- 1.3 ASIC is responsible for monitoring and providing consumer protection in relation to financial services and pursuant to section 12GD of the *Australian Securities and 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 and damage as a result of a contravention of the Act (section 12GM) and seek non-punitive orders such as an order requiring the publication of an advertisement (section 12GLA).
- 1.4 Mortgage Choice is a member of the Mortgage Industry Association of Australia ('**MIAA**') and offers financial services in relation to financial products in the course of trade or commerce, as defined in sections 12BAB and 12BA(7)(k) of the Act.
- 1.5 During the period from October 2002 to 22 February 2004 ('**Relevant Period**'), Mortgage Choice:
 - (a) caused commercials to be broadcast on radio and television stations;
 - (b) published advertisements in newspapers;
 - (c) issued printed material for use by Franchisees;
 - (d) caused statements promoting its business to be posted on its website at www.mortgagechoice.com.au ('**website**').
- 1.6 Some of the advertising and other material referred to in paragraph 1.5 contained the following statements:
 - (a) in the commercials, advertisements, website and the printed material ('**Advertising Representations**') as follows:
 - (i) Mortgage Choice brokers are '*totally unbiased*';

- (ii) Mortgage Choice provides *'unbiased home loan advice'*;
- (iii) Mortgage Choice consultants are *'paid the same regardless of which lender or loan you choose'*.

(b) in Mortgage Choice's Customer Charter (**'Customer Charter Representation'**):

"Our lender panel is reviewed from time to time to ensure that we have a cross-section of lenders who can offer what we consider to be the best choice of home loans."

- 1.7 Mortgage Choice and the Franchisees receive commission or other payments from lenders who are on the Panel. Mortgage Choice and the Franchisees do 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 advice given by Mortgage Choice is confined to lenders on the Panel, the Advertising Representations are false or misleading, misleading or deceptive, and/or are likely to mislead and deceive in contravention of sections 12DA and 12DB of the Act, in that they suggest that the advice given by Mortgage Choice and its consultants is not limited to any number or group of lenders and that Mortgage Choice and its consultants are paid the same amount whether a consumer chooses a lender who is on the Panel or not.
- 1.9 ASIC is concerned that the Customer Charter Representation may be misleading and deceptive or likely to mislead and deceive in contravention of sections 12DA of the Act, in that, the selection of members to the Panel (amongst other things) depends on the lenders willingness to pay commission and make other payments to Mortgage Choice.
- 1.10 It is Mortgage Choice's intention to immediately cease placing any commercials and promotions that contain references to the term *'unbiased'*, without the statement referred to in clause 2.1 below, and to remove this term from all printed material, the Customer Charter and its website. Notwithstanding this intention, and because of pre-booked advertising placements, Franchisees may require a reasonable period of time, not exceeding 30 days, to ensure that the term *'unbiased'* no longer appears in its advertising without qualification.
- 1.11 Mortgage Choice acknowledges ASIC's concerns and has offered ASIC this Enforceable Undertaking, which ASIC has agreed to accept.

2. UNDERTAKINGS

Pursuant to Section 93AA of the Act, Mortgage Choice provides the undertakings set out below:

Disclosure and corrective action

- 2.1 Mortgage Choice and its Franchisees will not use the Advertising Representations or the word *'unbiased'* in any future advertising or promotional material without including the following statement (or a similar statement that is correct at the time), which will be in a clearly visible and in a legible form:

"This information refers only to loans provided by the 27 lenders with whom it has arrangements under which it receives commissions and other payments."

In the case of the types of promotional material referred to in Annexure 1, Mortgage Choice and its Franchisees will comply with this clause from the relevant date contained in Annexure 1. Mortgage Choice and its Franchisees will otherwise comply with this clause from the date of this Enforceable Undertaking.

- 2.2 Mortgage Choice will immediately remove the Customer Charter Representation from the Customer Charter.
- 2.3 Mortgage Choice will amend its Operations Manual to require that, and Mortgage Choice will ensure that:
- (a) All clients are provided with a list of lenders that comprise the Panel at their first meeting with a Mortgage Choice broker.
 - (b) All Franchisees comply with the requirements contained in clauses 2.1 and 2.2 of this Enforceable Undertaking.
- 2.4 Within 30 days of entering into this Enforceable Undertaking, Mortgage Choice will place an advertisement, in the terms of Annexure 2 in *The Australian* newspaper and a newspaper circulating generally in each State in which Mortgage Choice conducts business. The advertisement shall be a quarter page, and placed where Mortgage Choice would ordinarily place advertisements intended to convey information about the mortgage products made available to consumers, through the offices of its Franchisees.
- 2.5 If Mortgage Choice receives any claim ('**Compensation Claim**') from a consumer ('**Claimant**') for loss and damage said to have been suffered by reason of the Advertising Representations, then the procedures outlined below will apply. Steps to be taken by Mortgage Choice, as set out in this paragraph, will be undertaken by and/or under the supervision of its Compliance and Corporate Standards Manager.
- (a) Within 30 days of entering into this Enforceable Undertaking, Mortgage Choice will appoint an independent person ('**Claims Reviewer**') to review each Compensation Claim. The Claims Reviewer will be:
 - (i) Legally qualified and with not less than 5 years of experience of handling claims under the consumer protection provisions of the Act or similar provisions in other legislation.
 - (ii) A person who is not previously known to be associated with Mortgage Choice.
 - (iii) A person whose appointment is approved by ASIC.
 - (b) The terms of the Claims Reviewer's appointment will be approved by ASIC and must include provisions as follows:
 - (i) That the Claims Reviewer will use his or her best endeavours to determine each Compensation Claim referred to him or her as expeditiously as reasonably possible.
 - (ii) That the Claims Reviewer may adopt such procedures, make such enquiries and conduct such further investigations as he or she considers reasonably appropriate to determine any Compensation Claim.

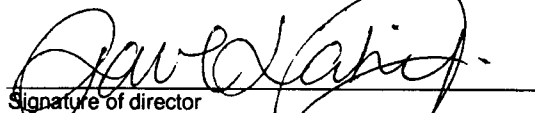
- (iii) That the Claims Reviewer will exercise due skill, care and attention in the determination of all Compensation Claims.
 - (iv) That Mortgage Choice will indemnify the Claims Reviewer in respect of any claims made against the Claims Reviewer arising out of the claims review process.
 - (v) That the Claims Reviewer will notify Mortgage Choice of his or her determination as soon as reasonably practicable after determining a Compensation Claim, and (if applicable) will provide the Claimant with written reasons for the rejection (or partial rejection) of the compensation claim and notice of rejection, within 7 days of his or her determination.
- (c) Mortgage Choice will provide the Claims Reviewer with a copy of this Enforceable Undertaking and will pay the remuneration of the Claims Reviewer. Mortgage Choice will use its best endeavours to ensure that the Claims Reviewer is able to determine all compensation claims as expeditiously as possible.
- (d) Within 7 days of receiving a Compensation Claim, Mortgage Choice will either:
- (i) Accept and pay the Compensation Claim; or
 - (ii) Refer the Compensation Claim to the Claims Reviewer for review and recommendation; and
 - (iii) In either event, write to the Claimant informing him/her what is to happen with his/her Claim and the time frame in which he/she is likely to receive any further response.
- (e) Within 21 days of the Claims Reviewer receiving notice of a Compensation Claim, he or she will issue a written report to Mortgage Choice and the Claimant, which sets out:
- (i) Details of any further documents or other information that might be needed to make a recommendation about the Compensation Claim. If this occurs, then the steps to be taken and the time limits set out in this paragraph will apply from when the further documents or other information are received by Mortgage Choice; or
 - (ii) A determination as to whether Mortgage Choice should pay the Compensation Claim, and (if so) whether in whole or in part, together with a written statement of reasons for that determination.
- (f) Mortgage Choice will not be obliged to pay a Compensation Claim if it establishes to the satisfaction of the Claims Reviewer any one or more of the following matters:
- (i) The Advertising Representations were not made to the Claimant.
 - (ii) The Claimant did not rely upon the Advertising Representations.

- (iii) The Claimant did not suffer any loss or damage by reason of the Advertising Representations.
 - (iv) The Claimant did not suffer loss and damage to the extent claimed in the compensation claim (in which case Mortgage Choice will be obliged to pay the Compensation Claim to the extent of the loss and damage that the Claims Reviewer determines the Claimant has suffered).
 - (g) If the Claims Reviewer determines that Mortgage Choice should pay the Compensation Claim or part of it, Mortgage Choice will pay the claim (or so much of it as the Claims Reviewer accepts) within 7 days of receiving the Claims Reviewer's determination.
 - (h) If the Claims Reviewer determines that a Compensation Claim should be rejected (in whole or in part), Mortgage Choice will procure that, within 7 days of rejecting the claim, the Claims Reviewer provides the Claimant with written notice of the Claims Reviewer's determination and the reasons for rejection of the Compensation Claim or that part that is not accepted.
- 2.6 Mortgage Choice will produce all documents in its possession that ASIC may request from time to time, relating to the procedure established in clause 2.5 and any Compensation Claims made under it.

3. ACKNOWLEDGMENTS

- 3.1 Mortgage Choice acknowledges that ASIC:
- (a) may issue a media release on execution of this Enforceable Undertaking referring to its terms and to the concerns ASIC had 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 via its website.
- 3.2 Mortgage Choice acknowledges that this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct described in this Enforceable Undertaking.
- 3.3 Mortgage Choice acknowledges that ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's power to investigate a contravention arising from future conduct or pursue criminal prosecution.
- 3.4 Mortgage Choice acknowledges that this Enforceable Undertaking has operative force only once it is accepted by ASIC.

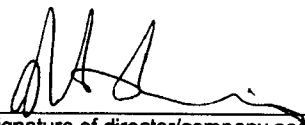
**Executed by Mortgage Choice Limited
ACN 009 161 979 in the presence of**



Signature of director

PAUL A. LAUFF

Name of director (print)

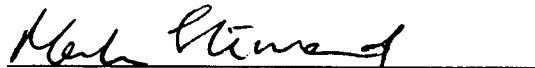
←  ←

Signature of director/company secretary
(Please delete as applicable)

DAVID M. HOSKINS

Name of director/company secretary (print)

**Executed by Australian Securities and
Investments Commission**



Authorised Delegate ←

Dated this 25th day of May 2004

ANNEXURE 1

STATE BASED / FRANCHISEE ADVERTISING

	Type	Date Actioned / To be Actioned
4.	Corporate website ¹	27 March 2004 ²
5.	External / shopfront signage for registered state offices	2 April 2004
6.	External / shopfront signage for franchisees	30 April 2004 ³
7.	Newspapers	25 May 2004 ²
8.	Business cards (Approximately 575,000 to be re-distributed.)	3 June 2004 ²
9.	Brochures / printed promotional material	4 June 2004 ²
10.	Posters	4 June 2004 ²
11.	Billboards (Approximately 20 nationwide)	11 June 2004 ²
12.	Banners (171 nationwide)	11 June 2004 ²

¹ Within the website, www.mortgagechoice.com.au, franchisees can advertise.

² Process commenced when email setting out implementation process circulated by Mortgage Choice to its franchisees on 31 March 2004.

³ Except 2 franchisees in Brisbane and Townsville as signage in the form of a light box which is expected to be completed by 3 June 2004.

ANNEXURE 2**MORTGAGE CHOICE****LOGOTYPE****CLARIFICATION OF ADVERTISING**

Mortgage Choice has a panel of lenders, the members of which pay Mortgage Choice commissions and other payments under arrangements with Mortgage Choice. Mortgage Choice provides home loan advice in relation to lenders who are on that panel. Mortgage Choice does not provide home loan advice in relation to lenders who are not on the panel.

In its previous advertising commencing from at least October 2002, Mortgage Choice has made statements to the effect that its brokers are unbiased, that it provides unbiased home loan advice and that Mortgage Choice brokers are paid the same regardless of which lender or loan is chosen by the customer ('**Statements**'). The Mortgage Choice lender panel, currently comprises 27 lenders, including Australia's leading financial institutions, who together offer over 200 mortgage products. For the 12 months ended December 2003, the lenders on the Mortgage Choice panel accounted for approximately 80% of the total home loan market by value in Australia.

ASIC considered that the Statements were misleading and deceptive or had the potential to mislead or deceive, given that Mortgage Choice did not provide advice in relation to lenders who were not on its panel.

Mortgage Choice wishes to make clear that in making the Statements, it was only intending to refer to the process by which the lender is chosen from the lenders who are members of the Mortgage Choice panel and not to the choice between lenders who are members of the panel and lenders who are not.

Mortgage Choice apologises for any confusion or misunderstanding that may have occurred.

If, as a consequence of the Statements, a Mortgage Choice customer understood that the advice given by a Mortgage Choice broker would take into account lenders who were not on the panel, and the customer believes that he or she has suffered loss as a consequence of that misunderstanding, he or she may be entitled to receive compensation for the loss. In that case, the customer should write to Mortgage Choice at Level 7, 182-186 Blues Point Road, North Sydney, NSW, 2060, to the attention of the Compliance and Corporate Standards Manager, with details of the claim and how he or she says the misunderstanding caused him or her loss.