

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

MR RENTAL AUSTRALIA PTY LTD
ABN 44 097 459 633

1. DEFINITIONS

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

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

Australian Credit Licence means a licence issued under the NCCP Act which authorises the licensee to engage in particular credit activities;

Consumer Lease has the meaning given it in section 169 of the NCC;

Effective Date means 8 January 2013;

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

NCC means the National Credit Code which is Schedule 1 to the NCCP Act;

Mr Rental Franchisee means a person who has entered into a franchise agreement with Mr Rental.

2. BACKGROUND

ASIC's Role

2.1 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 From 1 July 2010 ASIC's responsibilities were expanded to include administration and enforcement of the NCCP Act (including the NCC) which regulates consumer credit in Australia.

Regulation of Consumer Leases

2.3 The NCCP Act and NCC came into effect on 1 July 2010.

- 2.4 The NCCP Act and NCC require that:
- (a) a person who carries on a business of providing Consumer Leases must hold an Australian Credit Licence; and
 - (b) a Consumer Lease must disclose particular information, including the rental and any other charge payable under the lease.
- 2.5 However, the NCCP Act and NCC do not apply to Consumer Leases for an indefinite period.
- 2.6 The ASIC Act also provides that any term of a standard form consumer contract that is unfair, within the meaning of section 12BG of the ASIC Act, is void.

Mr Rental Australia Pty Ltd

- 2.7 Mr Rental Australia Pty Ltd (**Mr Rental**) is the franchisor of the Mr Rental system which involves the rental of home appliances to consumers.
- 2.8 Mr Rental Franchisees have, at all relevant times, offered rental of home appliances to consumers pursuant to a standard form contract prepared by Mr Rental.
- 2.9 The terms of the standard form contract were amended from 1 July 2010 (**Rental Agreement**) and included the following terms:
- (a) a term stating that the Rental Agreement was for "an indefinite period" which continues until it is terminated by either party;
 - (b) a requirement that the consumer indicate a minimum period for which they wished to rent the goods (**Calculation Period**);
 - (c) a term allowing the Mr Rental Franchisee to charge an additional fee if the consumer terminated the Rental Agreement prior to the end of the Calculation Period (**Calculation Period Fee**); and
 - (d) a term stating that the Calculation Period Fee will be the difference between the actual rental paid by the consumer, and the rental that the Mr Rental Franchisee would have charged if the actual rental period had been the Calculation Period nominated by the consumer;
 - (e) a term stating that either party may terminate the Rental Agreement at any time by giving one 'Payment Period's' notice to the other party.

However, the Rental Agreement did not set out the amount of the Calculation Period Fee, or provide the consumer with information to allow them to calculate it.

2.10 The Mr Rental Franchisees have not applied for, or obtained, Australian Credit Licences.

ASIC's Views

2.11 ASIC is of the view that the Calculation Period and the Calculation Period Fee have the effect of rendering the Rental Agreement, in substance, a Consumer Lease for a fixed term. Accordingly, the Rental Agreement is a Consumer Lease regulated by the NCCP Act and NCC, and the Mr Rental Franchisees are required to hold Australian Credit Licences to conduct their businesses insofar as they enter into agreements with consumers in the form of the Rental Agreement.

2.12 ASIC is also of the view that the application of the Calculation Period Fee is an unfair term within the meaning of section 12BG of the ASIC Act because it:

- (a) allows the Mr Rental Franchisees to impose an additional fee on the consumer;
- (b) does not disclose what that fee will be; and
- (c) does not provide information that would allow the consumer to calculate the fee.

Acknowledgement of Views

2.13 Mr Rental acknowledges ASIC's views, and that those views are reasonably held, and will take steps to address those views.

2.14 ASIC notes that Mr Rental has worked constructively with ASIC in this matter.

2.15 Mr Rental is fully committed to complying with the NCCP Act, the NCC and the ASIC Act.

2.16 ASIC notes that Mr Rental has indicated that it and/or the Mr Rental franchisees intend to apply for Australian credit licences.

3. UNDERTAKINGS

Acceptance of Enforceable Undertaking

3.1 Under section 93AA of the ASIC Act Mr Rental has offered the undertakings in paragraphs 3.2 to 3.4 and ASIC has agreed to accept those undertakings as an alternative to proceedings being commenced in the Federal Court of Australia.

Rental Agreement

- 3.2 Mr Rental will remove any provision authorising a Calculation Period Fee from the Rental Agreement.
- 3.3 Mr Rental will take all reasonable steps, including exercising any rights it has under its franchise agreements, to ensure that the Mr Rental Franchisees will:
- (a) not enter into any agreements with consumers which provide for the payment of a Calculation Period Fee; and
 - (b) not charge a Calculation Period Fee in respect of current Rental Agreements.
- 3.4 On behalf of the Mr Rental Franchisees Mr Rental will, on or before 14 February 2013:
- (a) refund to consumers with terminated Rental Agreements any Calculation Period Fee charged and paid by the consumer;
 - (b) notify each consumer with a current Rental Agreement of its undertaking in clause 3.3(b) by letter in the form of Annexure A.
 - (c) notify each affected consumer with a terminated Rental Agreement of its undertaking in clause 3.4(a) by letter to the consumer's last known address in the form of Annexure B.

4. ACKNOWLEDGMENTS

- 4.1 Nothing contained in this undertaking constitutes an admission by Mr Rental or the Mr Rental Franchisees.
- 4.2 Mr Rental acknowledges that ASIC:
- (a) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC (as set out in paragraphs 2.11 and 2.12);
 - (b) may from time to time publicly refer to this undertaking; and
 - (c) will make this undertaking available for public inspection.
- 4.3 Further, Mr Rental acknowledges that:
- (a) ASIC's acceptance of this 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 order in relation to any contravention not the subject of ASIC's concerns in this undertaking or arising from future conduct; and

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

4.4 Mr Rental acknowledges that this undertaking has no operative force until accepted by ASIC. Mr Rental and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC and that the undertakings given by Mr Rental and on behalf of the Mr Rental Franchisees will apply on and from the Effective Date.

Executed by and on behalf of
MR RENTAL AUSTRALIA PTY LTD
ABN 44 097 459 633
by its duly authorised representative

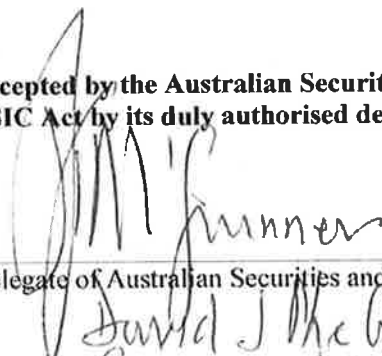

Signature of Authorised Representative


Signature of Witness



GLEN HICKMAN BARBARA ANNE KIRK
Name (printed) Name (printed)

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act by its duly authorised delegate:


Delegate of Australian Securities and Investments Commission

8/1/2013

David J Mc Guinness Senior Executive, Financial
Services Enforcement

Date: 20.12.12

[TO BE TYPED ON MR RENTAL LETTERHEAD]

[Date]

[Customer Name]
[Customer Address]

Dear [Customer]

Indefinite Period Rental Agreement
Agreement No: [insert]
Date of Termination: [insert]

We refer to your previous rental agreement with Mr Rental.

The Australian Securities and Investments Commission (ASIC) has been conducting an investigation into the form of the rental agreement used by Mr Rental and, in particular, the Calculation Period Adjustment provision.

As a result of its investigation, ASIC is of the view that the rental agreement is regulated by the *National Consumer Credit Protection Act 2009* and that Mr Rental franchisees are required to hold an Australian credit licence to conduct their business. ASIC is also of the view that the Calculation Period Adjustment provision is an unfair contract term under the *Australian Securities and Investments Commission Act 2001*.

What does this mean for you?

Mr Rental has worked constructively with ASIC in relation to its concerns and has agreed with ASIC on a without admission basis to offer to refund to customers the Calculation Period Adjustment where it was charged and paid on termination of the rental agreement.

You fit this category of customer and, accordingly, we **enclose** a cheque in the sum of \$[insert] in your favour in reimbursement of the Calculation Period Adjustment paid by you.

If you have any queries please contact Mr Rental on [insert contact number]. Alternatively, should you wish to seek free independent advice you may call the National Financial Counselling Helpline on 1800 007 007.

Yours faithfully

[TO BE TYPED ON MR RENTAL LETTERHEAD]

[Date]

[Customer Name]

[Customer Address]

Dear [Customer]

Indefinite Period Rental Agreement

Agreement No: [insert]

Goods: [insert]

We refer to your rental agreement with Mr Rental.

The Australian Securities and Investments Commission (ASIC) has been conducting an investigation into the form of the rental agreement used by Mr Rental and, in particular, the Calculation Period Adjustment provision.

As a result of its investigation, ASIC is of the view that the rental agreement is regulated by the *National Consumer Credit Protection Act 2009* and that Mr Rental franchisees are required to hold an Australian credit licence to conduct their business. ASIC is also of the view that the Calculation Period Adjustment provision is an unfair contract term under the *Australian Securities and Investments Commission Act 2001*.

What does this mean for you?

Mr Rental has worked constructively with ASIC in relation to its concerns and has agreed with ASIC on a without admission basis that it will not charge a Calculation Period Adjustment in respect of your agreement.

This means that when your rental agreement is terminated by either Mr Rental or you there will be no Calculation Period Adjustment applied. You can terminate your rental agreement at any time without having to pay a Calculation Period Adjustment. However, other fees and charges not relating to the termination of the rental agreement may apply under clause 11 of the Terms and Conditions that form part of your rental agreement and every other term and condition of your rental agreement will also continue to apply.

If you have any queries please contact Mr Rental on [insert contact number]. Alternatively, should you wish to seek free independent advice you may call the National Financial Counselling Helpline on 1800 007 007.

Yours faithfully