



**ASIC**

Australian Securities & Investments Commission

**ENFORCEABLE UNDERTAKING**

*National Consumer Credit Protection Act 2009 (Cth)*

Section 322(1)

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

**GRAHAM CLAUDE RENDELL**

Trading as

**KEY CREDIT**

C/- Suite 1, 92 Lissiman Street

Gosnells Western Australia 6110

**1. Definitions**

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

**ACL** means Australian Credit Licence

**ASIC** means the Australian Securities and Investments Commission

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

**Essential household property** means household property as prescribed under regulations made under subparagraph 116(2)(b)(i) of the *Bankruptcy Act 1966 (Cth)*

**Infringement Notices** means the infringement notices dated 14 September 2012 issued to Rendell under s 331 of the NCCP Act and regulation 39 of the NCCP Regulations

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

**NCC** means the National Credit Code, being Schedule 1 to the NCCP Act

**NCCP Regulations** means *National Consumer Credit Protection Regulations 2010 (Cth)*

**Rendell** means Graham Claude Rendell

## **2. Background**

### **2.1 ASIC's role**

- 2.1.1 Under s 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.
- 2.1.2 From 1 July 2010 ASIC's responsibilities were expanded to include the administration and enforcement of the NCCP Act which regulates consumer credit in Australia.

### **2.2 Graham Claude Rendell trading as Key Credit**

- 2.2.1 Rendell engages in credit activities, trading under the business name Key Credit (**Key Credit**).
- 2.2.2 Since 14 April 2011 Rendell has held ACL No. 390759, which authorises Rendell to engage in credit activities as a credit provider.

### **2.3 ASIC's investigation and concerns**

- 2.3.1 On 1 July 2010 the NCCP Act (incorporating the NCC) and the NCCP Regulations commenced.
- 2.3.2 The NCC includes a prohibition against credit providers securing loans by way of a mortgage over Essential household property (s 50(2) NCC).
- 2.3.3 In March 2012 ASIC commenced an investigation into Rendell's business pursuant to section 247 of the NCCP Act (**ASIC's Investigation**). ASIC was concerned that a term contained in credit agreements used by Rendell whereby borrowers agreed to, and Rendell accepted, a chattel mortgage over household property including over Essential household property, was in breach of s 50(2) of the NCC.
- 2.3.4 ASIC's view is that where a credit agreement contains a term creating a chattel mortgage over a schedule of household goods including items which are classified as Essential household property, the agreement is void to the extent that it contravenes s 50(2) of the NCC.
- 2.3.5 In discussions with ASIC staff during ASIC's Investigation Rendell agreed that since 1 July 2010 a number of credit agreements entered into by him were partly secured by way of household goods which were Essential household property.

2.3.6 As a result of ASIC's Investigation:

- (a) ASIC has issued and Rendell has paid the penalty specified in each of five Infringement Notices. Details of the Infringement Notices are contained in each Infringement Notice;
- (b) ASIC is concerned that there may have been underlying weaknesses in Rendell's compliance processes regarding implementation of legislative changes;
- (c) ASIC is concerned that borrowers may have been misled in relation to the use of Essential household property as security for their loans.

#### **2.4 Acknowledgement of concerns**

2.4.1 Rendell acknowledges and accepts ASIC's concerns.

### **3. Undertakings**

Under s 322(1) of the NCCP Act, Rendell has offered, and ASIC has agreed to accept as an alternative to commencing civil proceedings or pursuing administrative action, the following undertakings.

#### **3.1 Undertaking regarding mortgages over Essential household property**

- 3.1.1 Rendell has informed ASIC that he has ceased securing loans by way of a mortgage over Essential household property.
- 3.1.2 Rendell has not and will not rely on or enforce any mortgage over Essential household property given by borrowers who entered into such contracts on or after 1 July 2010 (the **Affected Borrowers**).
- 3.1.3 Rendell will as soon as is practicable and, in any event, no later than 21 days after the date of this enforceable undertaking, send to each Affected Borrower whose loan account is still current, a notice in the form of Annexure A.

#### **3.2 Undertaking regarding compliance consultant**

- 3.2.1 Rendell shall by 9 November 2012 engage a compliance consultant who is independent of Rendell and Key Credit and who has the necessary expertise, experience and operational capacity to complete the terms of engagement (the **Consultant**).

- 3.2.2 Rendell must:
- (a) engage the Consultant to perform the tasks necessary to fulfil the obligations imposed by this enforceable undertaking;
  - (b) permit the Consultant, to the extent that is reasonable having regard to the requirements of this enforceable undertaking, to have access to Key Credit's books, to interview any past or present employee and to consult with ASIC and disclose to ASIC any further information obtained by the Consultant in the course of carrying out their reviews;
  - (c) give the Consultant any information or explanation reasonably requested by the Consultant of any matter in any way connected with the reports required to be prepared by the Consultant under this enforceable undertaking.
- 3.2.3 The Consultant and the Consultant's terms of engagement must be approved in writing by ASIC before the Consultant is engaged. Rendell must advise ASIC of the expertise and prior association of the proposed Consultant with Rendell and Key Credit at the time approval is sought from ASIC. Rendell must provide the draft terms of engagement to ASIC by no later than 2 November 2012.
- 3.2.4 Rendell must seek written approval from ASIC to vary the terms of engagement of the Consultant once those terms are approved by ASIC in accordance with paragraph 3.2.3.
- 3.2.5 Rendell shall require the Consultant to undertake a review of Rendell's compliance with the credit legislation including but not limited to:
- (a) the general conduct obligations under section 47 of the NCCP Act;
  - (b) the responsible lending obligations under Chapter 3 of the NCCP Act;
  - (c) the obligations regarding credit contracts under Part 2 of the NCC;
  - (d) the obligations relating to mortgages under Part 3 of the NCC; and
  - (e) the obligations relating to enforcing mortgages under Part 5 of the NCC.
- 3.2.6 Rendell shall require the Consultant to prepare a written report on the review undertaken for the purposes of paragraph 3.2.5 (**Review Report**), which must include:
- (a) a description of the methods used in the review undertaken by the Consultant;

- (b) the Consultant's assessment of Rendell's compliance with the credit legislation including, but not limited to, the items specified in paragraph 3.2.5;
- (c) the Consultant's assessment of the adequacy of Rendell's existing arrangements and systems to ensure compliance with the obligations under his ACL;
- (d) whether Rendell's arrangements and systems in relation to meeting the general conduct obligations under section 47 of the NCCP Act are appropriately documented in a written plan;
- (e) details of all complaints made by consumers in relation to the credit activities engaged in by Rendell;
- (f) whether Rendell's internal dispute resolution procedure complies with Australian Standard AS ISO 10002 – Complaints Handling; and
- (g) recommendations for changes to Rendell's compliance arrangements and systems.

3.2.7 The Review Report must cover the period 1 November 2012 to 31 January 2013.

3.2.8 Rendell shall ensure that the Consultant submits the Review Report to Rendell and to ASIC by 1 March 2013.

3.2.9 Rendell must endeavour to implement the recommendations made by the Consultant in the Review Report as soon as practically possible.

3.2.10 By 31 March 2013, Rendell shall lodge with ASIC, and send to the Consultant, a signed report:

- (a) certifying which of the recommendations made by the Consultant in the Review Report have been implemented;
- (b) providing an explanation as to why any recommendations in the Review Report have not been implemented; and
- (c) providing a timetable for the implementation of any recommendations in the Review Report which have not been implemented.

3.2.11 Rendell shall ensure that the Consultant undertakes a further review to:

- (a) review Rendell's ongoing compliance with the credit legislation including, but not limited to, the items listed in paragraph 3.2.5; and
- (b) assess Rendell's implementation of the recommendations contained in the Review Report.

3.2.12 Rendell shall require the Consultant to prepare a written report on the review undertaken for the purposes of paragraph 3.2.11 (**Supplementary Review Report**), which must:

- (a) include the Consultant's assessment of Rendell's compliance with the credit legislation including, but not limited to, the items specified in paragraph 3.2.5;
- (b) assess Rendell's implementation of the changes recommended in the Review Report; and
- (c) make any further recommendations for changes to Rendell's compliance arrangements and systems (including any changes that were recommended in the Review Report but which have not been implemented and, in the Consultant's view, should be).

3.2.13 The Supplementary Review Report must cover the period 1 February 2013 to 31 July 2013.

3.2.14 Rendell shall ensure that the Consultant submits the Supplementary Review Report to Rendell and to ASIC by 31 August 2013.

3.2.15 Rendell must endeavour to implement the recommendations made by the Consultant in the Supplementary Review Report as soon as practically possible.

3.2.16 By 30 September 2013 Rendell shall lodge a signed report with ASIC:

- (a) certifying which of the recommendations made by the Consultant in the Supplementary Review Report have been implemented;
- (b) providing an explanation as to why any recommendations in the Supplementary Review Report have not been implemented; and
- (c) providing a timetable for the implementation of any recommendations in the Supplementary Review Report which have not been implemented.

#### **4. Costs**

4.1 Rendell undertakes to pay the cost of compliance with this enforceable undertaking.

#### **5. Requests for documents by ASIC**

5.1 Rendell will provide all documents and information requested by ASIC from time to time for the purpose of assessing Rendell's compliance with the terms of this enforceable undertaking.

## **6. Acknowledgements**

6.1 Rendell acknowledges that ASIC:

- (a) may issue a media release on execution of this 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 undertaking; and
- (c) will make this undertaking available for public inspection.

6.2 Further Rendell 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 enforceable 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.

6.3 Rendell acknowledges that ASIC had reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms of paragraph 3 above.

6.4 Rendell acknowledges that this undertaking has no operative force until accepted by ASIC, and Rendell and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

6.5 ASIC acknowledges that Rendell has co-operated with ASIC in relation to ASIC's Investigation.

## **7. Notification**

7.1 The address for providing ASIC with any document or notification required by the enforceable undertaking is:

The Senior Manager  
Deposit Takers, Credit and Insurers  
Australian Securities and Investments Commission  
GPO Box 9827  
Perth WA 6001.

7.2 The address for providing Rendell with any document or notification required by the enforceable undertaking is:

Mr Graham Rendell,  
C/- Key Credit  
Suite 1,  
92 Lissiman Street,  
GOSNELLS WA 6110



**Graham Claude Rendell**



**Signature of Witness**

26/10/12

**Date**

Melajja Lafrenais

**Print Name**

**Accepted by the Australian Securities and Investments Commission under s 322 of the National Consumer Credit Protection Act 2009 by its duly authorised delegate:**



**Tim Mullaly**

**Delegate of Australian Securities and Investments Commission**

30/10/2012

**Date**



**Annexure A – Communication to each Affected Borrower  
(To go on Key Credit letterhead)**

**Important Notice about your current loan with Key Credit**

Enquiries made by ASIC have indicated breaches of the *National Credit Code*. The *National Credit Code* provides a number of protections for borrowers relating to consumer credit.

**What's happened?**

When you obtained your loan with Key Credit you were advised that we had taken a mortgage over some of your essential household items. You were also advised that if you defaulted on your loan (for example, by not making repayments on time) Key Credit had the right to repossess those items. This was not correct.

**What the law says**

From 1 July 2010 it was not legal under the *National Credit Code* to use essential household property as security on consumer credit loans.

**How this affects you**

The mortgage over your essential household property is void and not enforceable.

If you default on your loan Key Credit will not and cannot take possession of these items. However this does not affect your obligation to make repayments.

This notice does not apply to mortgages over any other items (for example, motor vehicles or non-essential household property).

If you believe that you have been misled in any way by Key Credit using the essential household goods as a threat to recover payments, you should make contact with us immediately to discuss the issue.

If you are dissatisfied with our response you can access external dispute resolution. Contact the Financial Ombudsman Service on 1300 78 08 08.

**Questions?**

Should you have any questions contact Key Credit on 08 9394 0866

