

ENFORCEABLE UNDERTAKING

National Consumer Credit Protection Act 2009

Section 322

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

RENT THE ROO PTY LTD

ACN 001 408 448

45 Pindos Street, Tranmere TAS 7018

1. DEFINITIONS

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

ACL means an Australian credit licence as defined under section 35 of the NCCP Act.

ASIC means the Australian Securities and Investments Commission;

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

Credit legislation has the same meaning that term is given in the NCCP Act;

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

Obligation means any obligation, including a time-requirement, imposed on Rent The Roo by the undertakings and includes any obligation arising from the requirement in paragraph 5.10 to comply with a recommendation;

Recommendation means a recommendation pursuant to paragraph 5.7(c);

Rent The Roo means Rent The Roo Pty Ltd ACN 001 408 448; and

Undertakings means the undertakings contained in part 5 of this enforceable undertaking.

2. BACKGROUND

ASIC's role

2.1. Under s 1 of the *Australian Securities and Investments Commission Act 2001* (Cth), 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 the administration and enforcement of the NCCP Act, which regulates consumer credit in Australia.

Details of Conduct

- 2.3. Rent The Roo operates a national home appliance and furniture rental business.
- 2.4. Rent The Roo was previously known as Rent-The-Roo Pty Ltd during the period 18 August 2003 to 22 March 2012;
- 2.5. Rent The Roo is a lessor under consumer leases to which the Code applies.
- 2.6. Rent The Roo has held an ACL, number 387405, since 13 December 2010.
- 2.7. Rent The Roo has a network of franchises that operate as either:
- (a) a credit representative under Rent The Roo's ACL; or
 - (b) a holder of an independent ACL.
- 2.8. As the holder of an ACL, Rent The Roo (including its credit representatives) must comply with the general conduct obligations under section 47 of the NCCP Act and the responsible lending obligations under Chapter 3 of the NCCP Act.
- 2.9. Rent The Roo regularly deals with consumers who may be considered to be vulnerable, in that:
- (a) the majority of Rent The Roo's customer base are in receipt of social security or government benefits as their only source of income; and
 - (b) Rent The Roo deals with Indigenous consumers living in regional and remote locations who have limited access or exposure to other mainstream retail and/or credit services and whose first language may not be English.
- 2.10. Following a review of sample consumer leases provided by Rent The Roo, ASIC formed the view that Rent The Roo had not in all instances where it entered into consumer leases through its credit representatives:
- (a) made reasonable inquiries about the consumer's financial situation. In particular, on a number of occasions, not all of Rent The Roo's credit representatives:
 - (i) made adequate inquiries about the consumer's income or expenses; or
 - (ii) properly recorded the period for which the consumer's income or expenses applied; and

- (b) taken reasonable steps to verify the financial situation of the consumer before making an assessment of whether the consumer lease would be unsuitable. In particular, on a number of occasions, not all of Rent The Roo's credit representatives:
 - (i) obtained the consumer's Centrelink statements or proof of income documents to verify their income; or
 - (ii) where proof of income documents were obtained, those documents did not verify the income stated in the consumers application for the consumer lease.
- 2.11. ASIC also reviewed Rent The Roo's internal policies and procedures and formed the view that Rent The Roo's responsible lending policy, at the time:
- (a) did not have an adequate procedure on how to conduct an assessment of whether a particular consumer lease would be unsuitable to a consumer; and
 - (b) did not provide guidance as to how the documentation required to verify a consumer's financial situation should be applied to an unsuitability assessment.

Infringement notice

- 2.12. On 20 March 2013, ASIC issued an infringement notice to Rent The Roo pursuant to s331 of the NCCP Act and regulation 39 of the *National Consumer Credit Protection Regulations 2009*. The infringement notice related to a breach of section 153(1)(c) of the NCCP Act, in that Rent The Roo failed to take reasonable steps to verify the financial situation of a consumer before making an assessment of whether the consumer lease would be unsuitable for the consumer.
- 2.13. Rent The Roo paid the penalty set out in the infringement notice pursuant to an instalment plan approved by ASIC and the infringement notice was paid in full on 15 September 2013.

3. ASIC'S CONCERNS

- 3.1. ASIC is concerned that Rent The Roo, because of the conduct in paragraph 2.10, has not complied with all of its responsible lending obligations or with the general conduct obligations expected of the holder of a ACL under section 47 of the NCCP Act.
- 3.2. ASIC is also concerned, because of the conduct in paragraphs 2.10 and 2.11, that credit representatives of Rent The Roo are not adequately trained to comply with their responsible lending obligations and that Rent The Roo does not have adequate systems and policies in place to ensure the large network of credit representatives and franchisees it maintains comply with those obligations.
- 3.3. ASIC is particularly concerned because Rent The Roo (and its credit representatives) regularly deal with consumers who may be classified as vulnerable for the reasons described in paragraph 2.9.

4. ACKNOWLEDGEMENTS

- 4.1. Rent The Roo acknowledges:
- (a) ASIC's concerns;
 - (b) that those concerns are reasonably held;
 - (c) that Rent The Roo must comply with the requirements of this enforceable undertaking in order to address ASIC's concerns and to ensure compliance with the NCCP Act; and
 - (d) that the steps set out in this enforceable undertaking are necessary to address ASIC's concerns and to ensure compliance with the NCCP Act.
- 4.2. ASIC acknowledges that Rent The Roo has worked constructively with ASIC to resolve ASIC's concerns.

5. UNDERTAKINGS

Acceptance of Undertakings

- 5.1. As an alternative to proceedings against Rent The Roo for contraventions of the NCCP Act or administrative action in relation to Rent The Roo's ACL, or both, Rent The Roo has offered, under section 322 of the NCCP Act, and ASIC has agreed to accept, the Undertakings set out below.

Engagement of Consultant

- 5.2. Rent The Roo must, by **31 October 2013**, engage an independent external compliance consultant (the **Consultant**), whose appointment and terms of reference are to be approved by ASIC in writing (such approval not to be unreasonably withheld).
- 5.3. Rent The Roo must not vary the terms of reference for the Consultant without advance written approval of ASIC.
- 5.4. Rent The Roo will pay the costs of and in connection with the engagement of the Consultant and will not seek reimbursement of, contribution towards, or otherwise directly pass on these costs to its clients.

Compliance Review

- 5.5. Rent The Roo must require the Consultant to undertake reviews of Rent The Roo's compliance with the credit legislation, including but not limited to a review of:
- (a) compliance with section 47 of the NCCP Act;
 - (b) Rent The Roo's responsible lending conduct policies and procedures and how these are applied in practice;

- (c) the documentation which Rent The Roo provides to its credit representatives and franchisees as part of ensuring compliance by them with credit legislation including Rent The Roo's pro-forma contract documents, quotes, preliminary assessments, credit guides, assessments, and pre-contractual statements;
 - (d) a sample of Rent The Roo's client files relating to consumer leases, including a sample of files of each corporate credit representative of Rent The Roo selected at random, including a sample of those living in regional and remote locations (the size and selection of which is to be determined by the Consultant without influence from the licensee); and
 - (e) the training provided by Rent The Roo to its credit representatives and franchisees as part of ensuring compliance by them with credit legislation, with a particular emphasis on how they deal with vulnerable consumers as described in paragraph 2.9.
- 5.6. For the purposes of paragraph 5.5 above, Rent the Roo must require the Consultant in conducting its reviews to have regard to the adequacy of Rent The Roo's policies and procedures in their application to vulnerable consumers (as described in paragraph 2.9) including:
- (a) where the consumer lives in a regional or remote location and has limited or no access to their financial records, what steps Rent The Roo takes to verify the consumer's financial situation and obtain documentary evidence of the same; and
 - (b) where the consumer's first language is not English, what explanations are provided to the consumer and the method by which the explanations are provided, concerning the lease, the ownership of the goods which are the subject of the lease and the total cost of entering the lease.
- 5.7. Rent The Roo must require the Consultant to give written reports to Rent The Roo and to ASIC that set out:
- (a) a description of the review undertaken by the Consultant as required for the purposes of paragraph 5.5;
 - (b) the Consultant's assessment of Rent The Roo's compliance with the credit legislation, including but not limited to each of the items specified in paragraph 5.5;
 - (c) recommendations for any changes to Rent The Roo's systems, policies, documentation and training that are necessary to ensure compliance with the credit legislation, and a time-frame for implementation of such changes; and
 - (d) the Consultant's assessment as to whether any recommendations made by the Consultant have been implemented effectively.
- 5.8. Rent The Roo must ensure that the Consultant carries out the reviews and prepares the written reports as required by paragraphs 5.5 to 5.7, which consider

~~Rent The Roo's compliance with credit legislation during each of the following periods:~~

- (a) **1 November 2013 to 28 February 2014; and**
 - (b) **1 July 2014 to 30 September 2014.**
- 5.9. Rent The Roo shall ensure that the Consultant submits the reports required by paragraph 5.7 to Rent The Roo and ASIC within 30 days of the expiration of each of the periods specified in paragraph 5.8.
- 5.10. Rent The Roo must comply with each of the Consultant's recommendations and the time-frame for implementation of each recommendation unless otherwise agreed by ASIC.
- 5.11. Rent The Roo shall, within 60 days after the due date of each report specified in paragraph 5.9, lodge with ASIC a written statement:
- (a) identifying which of the recommendations made in the Consultant's report have been implemented; and
 - (b) providing a proposed timetable for the implementation of any recommendations in the Consultant's reports which had, at the date of the written statement, not been implemented (**outstanding recommendations**)
- 5.12. If paragraph 5.11(b) applies and ASIC has agreed to Rent The Roo's proposed timetable, Rent The Roo shall, within 7 days of the implementation of all outstanding recommendations, lodge with ASIC a written statement certifying that all of the outstanding recommendations have been implemented.

Assistance to the Consultant

- 5.13. Rent The Roo must, for the purposes of the reviews agreed to in these Undertakings:
- (a) give the Consultant any assistance, information and explanations that the Consultant reasonably requires for the purposes of conducting each review; and
 - (b) permit the Consultant, subject to any claim of legal professional privilege, to:
 - (i) have access to their books, including client files;
 - (ii) interview employees, contractors and representatives; and
 - (iii) contact borrowers.
- 5.14. Rent The Roo must permit the Consultant to liaise with ASIC about the Consultant's reviews and reporting as set out in the terms of reference specified in paragraph 5.2 and 5.3, including the selection of contracts and files for the purposes of the reviews specified in paragraph 5.5.

Non-Compliance

- 5.15. Rent The Roo must notify ASIC in writing within seven business days of any failure by Rent The Roo to comply with an Obligation.
- 5.16. If Rent The Roo notifies ASIC pursuant to paragraph 5.15, or if ASIC notifies Rent The Roo in writing that ASIC considers Rent The Roo has failed to meet an Obligation, Rent The Roo is deemed to be on notice that ASIC considers that Rent The Roo has failed to meet an Obligation.
- 5.17. Should Rent The Roo be on notice in respect of a failure to meet an Obligation, and where Rent The Roo remains in default of that Obligation for a period of 15 consecutive business days, Rent The Roo undertakes not to engage in credit activities while it remains in default of the Obligation (save for any time requirement of that Obligation) unless otherwise agreed by ASIC in writing.
- 5.18. Despite paragraph 5.17, Rent The Roo may continue to engage in credit activities in respect of credit contracts for which it was acting as lessor up to and including the day which is 14 business days after which it was put on notice of its failure to meet an Obligation.
- 5.19. Paragraphs 5.15 to 5.18 do not affect any application to a Court or orders which may be made by a Court pursuant to section 322 of the NCCP Act.

Costs

- 5.20. Rent The Roo will pay the costs of its compliance with this enforceable undertaking, including all remuneration and costs associated with the Consultant.

Provision of documents and information

- 5.21. Rent The Roo will provide all documents and information requested by ASIC from time to time for the purpose of assessing Rent The Roo's compliance with the terms of the Undertakings.

6. ACKNOWLEDGEMENTS AS TO OPERATION OF THE ENFORCEABLE UNDERTAKING

- 6.1. Rent The Roo acknowledges that ASIC:
 - (a) will 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.
- 6.2. Rent The Roo further acknowledges that:
 - (a) ASIC's acceptance of this enforceable 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 the background section of this enforceable undertaking or arising from future conduct; and

- (b) 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 or arising from future conduct;
- (c) should ASIC form the view that Rent The Roo has failed to comply with this enforceable undertaking, ASIC may take additional action including (without limitation) seeking court orders under section 322 of the NCCP Act requiring them to comply with the terms of this enforceable undertaking.

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

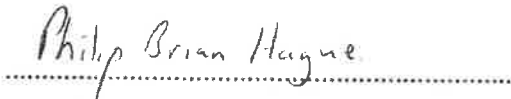
EXECUTED BY RENT THE ROO)
PTY LTD in accordance with section)
127(1) of the *Corporations Act 2001*:)
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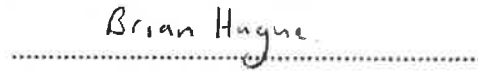
Signature of Director



Signature of Director

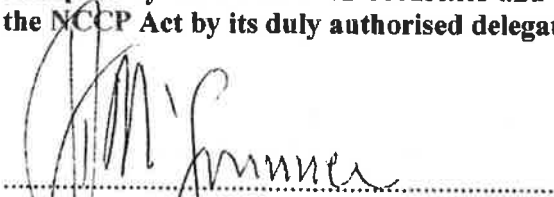


Print name of Director



Print name of Director

Accepted by the Australian Securities and Investments Commission under section 322 of the NCCP Act by its duly authorised delegate:



David McGuinness

Senior Executive, Financial Services Enforcement

Date: 31 October 2013