



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:

TRU BLU COLLECTION SERVICES PTY LTD

ACN 139 988 800

6 Anjudy Close, Casula, NSW 2170

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 in section 35 of the NCCP Act.

Amazing Loans means the Amazing Loans Group of companies comprising:

- (a) Amazing Loans Ltd (ACN 112 725 756), an unlicensed carried over instrument lender;
- (b) Amazing Loans SPV Pty Ltd (ACN 130 116 139) holder of ACL number 387028; and
- (c) IEG SPV Pty Ltd (ACN 141 572 625) holder of ACL number 387186.

ASIC means the Australian Securities and Investments Commission.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (C'th).

Code means the National Credit Code, which is schedule 1 to the NCCP Act.

collection activity means any credit activity other than the continued receipt of established periodic payments from consumer debtors by way of direct transfers pursuant to the credit contracts.

Corporations Act means the *Corporations Act 2001* (C'th).

NCCP Act means the *National Consumer Credit Protection Act 2009* (C'th).

Tru Blu means Tru Blu Collection Services Pty Ltd (ACN 139 988 800).

- 1.2 Except so far as the contrary intention appears in this Enforceable Undertaking the interpretation provisions in Part 1.2 of the Corporations Act and Part 2 Division 4 of the ASIC Act and the Definitions in Part 1.2 of the NCCP Act apply for the purposes of this Enforceable Undertaking as if those provisions were provisions of this Enforceable Undertaking.

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 the administration and enforcement of the NCCP Act, which regulates consumer credit in Australia.

Details of Conduct

- 2.3 From 2005 Amazing Loans operated a business as an alternative or payday lender providing short term loans for amounts between \$1,000 and \$20,000 to borrowers.
- 2.4 On 23 October 2012, Tru Blu purchased a loan book from Amazing Loans that was comprised of approximately 3,200 credit contracts (**the credit contracts**).
- 2.5 Pursuant to the purchase of the loan book, Amazing Loans assigned to Tru Blu its rights and obligations under the credit contracts such that Tru Blu became the credit provider pursuant to the provisions of the NCCP Act.
- 2.6 From 23 October 2012 or shortly thereafter, Tru Blu proceeded to collect money payable by the borrowers to the credit provider pursuant to the credit contracts.
- 2.7 Tru Blue did not hold an Australian Credit Licence (**ACL**).

ASIC's investigation and analysis

- 2.8 On 26 July 2013 ASIC commenced an investigation in relation to suspected contraventions of:
- (a) section 29 of the NCCP Act by Tru Blu from 28 November 2012 and ongoing;
 - (b) section 32 of the NCCP Act by Tru Blu from 28 November 2012 and ongoing;
 - (c) sections 29 and/or 32 of the NCCP Act by Tru Blu directors and/or employees from 28 November 2012 and ongoing; and
 - (d) sections 76 or 78 of the National Credit Code by Tru Blu.

- 2.9 On or about 26 September 2013 Tru Blu ceased to collect debts payable under the credit contracts, but continued receipt of established periodic payments from consumer debtors by way of direct transfers.
- 2.10 At all material times Tru Blu held a master licence for debt collection, issued by the New South Wales Commissioner of Police pursuant to the *Commercial Agents and Private Inquiry Agents Act 2004* and obtained independent legal advice that it was not otherwise required to hold an ACL to conduct its activities.
- 2.11 The directors of Tru Blu now accept that that advice was not correct.
- 2.12 Tru Blu has since applied for an Australian Credit Licence.
- 2.13 On the basis of the information obtained in the course of its investigation, ASIC accepts that the directors of Tru Blu genuinely misunderstood the effect of the assignment of the credit contracts and the consequent obligations under the NCCP Act.

3. ASIC'S CONCERNS

- 3.1 As a credit provider under a credit contract, Tru Blu was engaging in a credit activity and, pursuant to section 29 of the NCCP Act, was required to hold an ACL.
- 3.2 Section 32 of the NCCP Act prohibits a person from receiving or accepting any money pursuant to a credit contract, where the person is not the holder of an ACL.
- 3.3 Between 23 October 2012 and the date of this enforceable undertaking, Tru Blu was not granted and therefore did not hold an ACL.
- 3.4 Accordingly, ASIC is concerned that from 23 October 2012 Tru Blu, its directors and key employees may have contravened sections 29 and 32 of the NCCP Act by engaging in credit activities without an ACL.

4. ACKNOWLEDGEMENTS

- 4.1 Tru Blu acknowledges:
- (a) ASIC's concerns;
 - (b) that ASIC's concerns are reasonably held;
 - (c) that Tru Blu 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 the Code; 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 and the Code.

- 4.2 ASIC acknowledges that Tru Blu has worked constructively with ASIC to address ASIC's concerns.

5. UNDERTAKINGS

- 5.1 Under s 322 of the NCCP Act, Tru Blu has offered, and ASIC has agreed to accept as an alternative to commencing civil proceedings against Tru Blu for contraventions of the NCCP Act and the Code, the following undertakings:

Prohibition on Engaging in credit activities without an ACL

- 5.1.1 From the date that this enforceable undertaking is accepted by ASIC, Tru Blu will not engage in any collection activity in respect of the credit contracts until it becomes the holder of an ACL.

Training and Development

- 5.1.2 As part of its compliance plan, Tru Blu will require that, by 30 June 2014 the following persons, or any person who subsequently assumes the role or substantive responsibilities of the following persons, will enrol in and complete a Certificate IV course in Credit Management, offered by an authorised institution:

- (a) Jason McMillan (Director)
- (b) Andrew Tran (Director)
- (c) William Lazaro; and
- (d) Ana Chavez

- 5.1.3 Tru Blu shall keep a written record of the completion of each course undertaken by each of the persons referred to in sub paragraph 5.1.2 and will provide this information to the independent external compliance consultant referred to in sub paragraph 5.1.5, for the purposes of the compliance review to be undertaken in accordance with sub paragraphs 5.1.8 to 5.1.14.

Early Termination Fee

- 5.1.4 Where Tru Blu is seeking to recover a fee or charge payable on early termination or repayment of a credit contract, the amount it may recover must not exceed the amount representing Tru Blu's loss arising from the early termination or repayment.

Engagement of a Consultant

- 5.1.5 Tru Blu will engage an independent external compliance consultant (the **Consultant**), whose appointment and terms of reference are to be agreed and approved by ASIC in writing (such approval not to be unreasonably withheld).
- 5.1.6 Tru Blu will not vary the terms of reference for the Consultant without advance written approval of ASIC.
- 5.1.7 Tru Blu will pay the costs of and in connection with the engagement of the Consultant.

Compliance Review

- 5.1.8 Tru Blu will require the Consultant to undertake a review of Tru Blu's compliance with the credit legislation and any ACL conditions, including but not limited to a review of:
- (a) compliance with section 47 of the NCCP Act;
 - (b) a sample of client files relating to credit contracts; and
 - (c) the training provided by Tru Blu to its employees to ensure compliance with the credit legislation.
- 5.1.9 Tru Blu will require the Consultant to give written reports to Tru Blu and to ASIC that set out:
- (a) a description of the review undertaken by the Consultant as required for the purposes of sub paragraph 5.1.8;
 - (b) the Consultant's assessment of Tru Blu's compliance with the credit legislation, including but not limited to each of the terms specified in sub paragraph 5.1.8;
 - (c) recommendations for any changes to Tru Blu'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.
- 5.1.10 Tru Blu will ensure that the Consultant carries out the reviews and prepares a written report as required by sub paragraph 5.1.9, in relation to Tru Blu's business activities during each of the following periods:
- (a) 1 January 2014 to 30 June 2014;
 - (b) 1 July 2014 to 31 December 2014;

(c) 1 January 2015 to 30 June 2015; and

(d) 1 July 2015 to 31 December 2015.

5.1.11 Tru Blu will ensure that the Consultant submits the reports required by sub paragraph 5.1.9 to Tru Blu and ASIC within 30 days of the expiration of each of the six month periods specified in paragraph 5.1.10.

5.1.12 Tru Blu will comply with each of the Consultant's recommendations and the time-frame for implementation of each recommendation unless otherwise agreed by ASIC.

5.1.13 Tru Blu shall, within 60 days after the due date of each written report, 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**).

5.1.14 If sub paragraph 5.1.13(b) applies and ASIC has agreed to Tru Blu's proposed timetable, Tru Blu 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

5.1.15 Tru Blu will, for the purposes of a review referred to in paragraph 5.1.8:

(a) give the Consultant any assistance, information and explanations that the Consultant reasonably requires for the purposes of conducting a review; and

(b) permit the Consultant, subject to any claim of legal professional privilege, to:

- (i) have access to Tru Blu's books, including client files;
- (ii) interview employees, contractors and representatives; and
- (iii) contact borrowers.

5.1.16 Tru Blu will permit the Consultant to liaise with ASIC about the Consultant's reviews and reporting as set out in the terms of reference referred to in sub paragraph 5.1.5, including the selection of client files for the purposes of the review specified in sub paragraph 5.1.8.

Non-Compliance

5.1.17 Tru Blu will notify ASIC in writing within seven business days of any failure by Tru Blu to comply with the terms of this enforceable undertaking.

Costs

- 5.1.18 Tru Blu will pay the costs of its compliance with this enforceable undertaking, including all remuneration and costs associated with the Consultant and the costs of staff training.

Provision of documents and information

- 5.1.19 Tru Blu will provide all documents and information requested by ASIC from time to time for the purposes of assessing Tru Blu's compliance with the terms of this enforceable undertaking.

6. ACKNOWLEDGEMENTS

- 6.1 Tru Blu 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.


- 6.2 Tru Blu further acknowledges that:

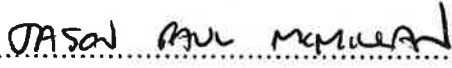
- (a) ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue criminal prosecution or its power to lay charges or seek pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct; and
- (b) this 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 Tru Blu 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 Tru Blu to comply with the terms of this enforceable undertaking.


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

EXECUTED BY TRU BLU COLLECTION)
SERVICES PTY LTD in accordance with)
section 127(1) of the *Corporations Act 2001*:)

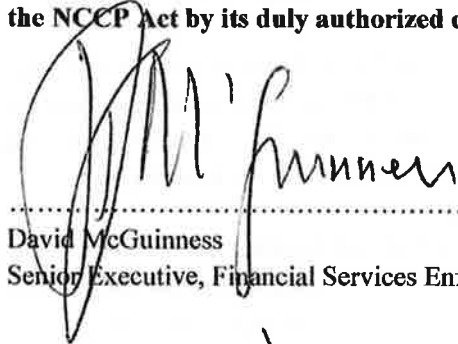

.....
Signature of Director


.....
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 authorized delegate:**


.....
David McGuinness
Senior Executive, Financial Services Enforcement

Date: 23 December 2013