

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 (ASIC) by:

Brett Morgan
Calamvale QLD 4116

1. DEFINITIONS

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

ACL means Australian Credit Licence as defined in section 35 of the NCCP Act.

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

Credit Activity has the meaning given to it by section 6 of the NCCP Act.

Credit Legislation means the NCCP Transitional Act, NCCP Act and NCC.

Credit Representative has the meaning given to it by section 64 of the NCCP Act.

Mr Morgan means Brett Morgan, 43 years old.

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

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

NCCP Transitional Act means the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cth).

Home Zone Rentals means Rent the Roo Brisbane South Pty Ltd (ACN 133 959 654) trading as Home Zone Rentals QLD BN21931343.

Suspension Period means a period of three years from the date of the execution

of this enforceable undertaking.

2. ASIC'S ROLE

- 2.1 Pursuant to 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 Credit Legislation which regulates consumer credit in Australia.

3. BACKGROUND

- 3.1 Home Zone Rentals was registered as a company on 30 October 2008. The company's registered office is Suite 30, Level 1, 223 Calam Road, Sunnybank Hills, Queensland, 4109 and its principal place of business is an address known to ASIC located at Calamvale, Queensland, 4116. Mr Morgan is a director and shareholder of the company and the company's secretary.
- 3.2 Home Zone Rentals was formerly a franchisee of the national franchise group Rent the Roo Pty Ltd. This franchise agreement was cancelled on 30 June 2010 and there was no further association by Home Zone Rentals with Rent The Roo Pty Ltd.
- 3.3 Neither Home Zone Rentals, nor its directors, were at any time registered or licensed to engage in Credit Activity.
- 3.4 Home Zone Rentals advertised that it could provide a range of household items for hire under a 'rent to buy' arrangement. Home Zone Rentals' website stated that it could provide rental agreements where the consumer could 'own the item at the end of the term with no more to pay' and that at any time during that period the consumer could choose to purchase the goods outright.

3.5 Home Zone Rentals' rental agreement provides both a right to purchase the goods on certain terms during the term of the rental agreement, as well as passing of title to the goods by gifting at the conclusion of the agreement.

3.6 The total amount payable under the rental agreement exceeded the cash price of the goods. As a result, Home Zone Rentals' rental agreement may be characterised as a sale of goods by instalments within the meaning of section 9 of the NCC and therefore amounts to the provision of credit to which the Credit Legislation applies.

4. ASIC'S INVESTIGATION

4.1 On 11 May 2011, ASIC commenced an investigation into the activities of Home Zone Rentals, pursuant to section 247 of the NCCP Act (**ASIC's Investigation**). ASIC's Investigation was in relation to suspected contraventions of:

- (a) schedule 2, part 2, items 4, 6 and 8 of the NCCP Transitional Act (engaging in credit activities while not registered or licensed);
- (b) section 30 of the NCCP Act (advertising or holding out while not licensed);
and
- (c) section 191 of the NCC (contracting out of the NCC).

4.2 On 21 July 2011, ASIC's Investigation was expanded to include suspected contraventions of section 29 of the NCCP Act (engaging in credit activities while not licensed).

4.3 As a result of ASIC's Investigation, ASIC has concerns that:

- (a) Mr Morgan, as director of Home Zone Rentals, engaged in Credit Activity by causing Home Zone Rentals to enter into a number of consumer leases, as a lessor, which involved the provision of credit for household items;
- (b) at the time these consumer leases were entered into, neither Home Zone Rentals, nor Mr Morgan, were the holder of an ACL or the Credit Representative of an ACL holder; and

- (c) Mr Morgan, as director of Home Zone Rentals, caused the consumer leases to be drafted in a manner that attempted to restrict the remedies available to lessees under the provisions of the NCCP Act.

5. ASIC'S CONCERNS

5.1 As a consequence of the conduct outlined above at clause 4.3, ASIC is concerned that Mr Morgan may not have complied with:

- (a) schedule 2, part 2, items 4 and 6 of the NCCP Transitional Act;
- (b) section 29 of the NCCP Act; and
- (c) section 191 of the NCC.

6. ACKNOWLEDGEMENT OF CONCERNS

6.1 Mr Morgan acknowledges:

- (a) ASIC's concerns and that those concerns are reasonably held; and
- (b) that he must comply with the requirements of this Enforceable Undertaking in order to address ASIC's concerns and to ensure compliance with the Credit legislation.

7. UNDERTAKINGS

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

Undertaking to refrain from engaging in Credit Activity

7.2 Mr Morgan undertakes that during the Suspension Period he will not:

- (a) engage in a Credit Activity, save for as provided in paragraph 7.2 (g) below;
- (b) hold out that he holds an ACL;
- (c) apply to ASIC under section 36 of the NCCP Act for an ACL;

- (d) become the Credit Representative of an ACL holder;
- (e) be a director of a company that holds an ACL;
- (f) be a director of a company that is the Credit Representative of an ACL holder; and
- (g) become an employee of an ACL holder or the Credit Representative of an ACL holder (**Proposed Employer**), unless:
 - (i) he has notified ASIC in writing of his intention to become an employee of the Proposed Employer;
 - (ii) in the case of the Proposed Employer being an ACL holder, the proposed employment does not require Mr Morgan to be its Credit Representative;
 - (iii) where the duties of the proposed employment require Mr Morgan to be involved in a Credit Activity, ASIC is satisfied that the Proposed Employer has sufficient procedures in place to ensure adequate supervision of Mr Morgan's involvement in that Credit Activity; and
 - (iv) ASIC has notified Mr Morgan in writing of its consent to Mr Morgan being employed by the Proposed Employer.

7.3 Mr Morgan undertakes that he will provide copies of documents as ASIC may reasonably request during the suspension period.

7.4 Mr Morgan undertakes that at the end of the Suspension Period, he will not engage in a Credit Activity unless he first obtains an ACL or becomes the Credit Representative of an ACL holder.

7.5 Mr Morgan acknowledges he is now aware of the obligations and prohibitions imposed on a person by the NCCP Act, in particular the prohibition in relation to engaging in a Credit Activity without a licence.

8. COSTS

8.1 Mr Morgan undertakes to bear his own costs of the entry into and compliance with this enforceable undertaking.

9. ACKNOWLEDGEMENTS

9.1 Mr Morgan 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.

9.2 Mr Morgan 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;
- (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; and
- (c) should ASIC form the view that Mr Morgan has failed to comply with this Enforceable Undertaking, ASIC may take additional action including (without limitation) seeking court orders under section 322(4) of the National Credit Act requiring him to comply with the terms of this Enforceable Undertaking.

9.3 Mr Morgan acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC, and Mr Morgan and ASIC acknowledge that the date of this Enforceable Undertaking is the date on which it is accepted by ASIC.

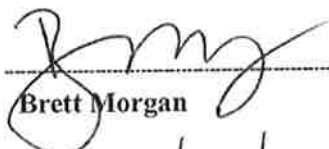
9.4 ASIC acknowledges that Mr Morgan has cooperated with ASIC during its investigation and responded to ASIC's concerns.

10. NOTIFICATION

10.1 The address for providing ASIC with any notice is:

Australian Securities and Investments Commission
Level 20, 240 Queen Street
Brisbane QLD 4001
Attention: The Senior Manager, Deposit Takers, Credit and Insurers

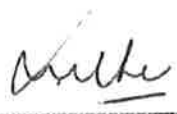
10.2 The address for providing Mr Morgan with any notice or document is known to ASIC.



Brett Morgan

18/9/2013

Date



Signature of Witness

MICHAEL LEE

Name of Witness

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



David McGuinness
Delegate of the Australian Securities and Investments Commission

26/9/2013

Date