



ENFORCEABLE UNDERTAKING

National Consumer Credit Protection Act 2009

Section 322(1)

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

SEL Absolute Return Fund SA Pty Ltd

ACN 090 593 310

53 Wattlebury Road

Lower Mitcham SA 5062

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);

Commencement Date means the date upon which this Undertaking is accepted by ASIC;

Consumer includes the plural and means a natural person who has entered into a Sale Agreement with SEL during the Relevant Period;

Credit has the meaning given by s3(1) of the National Credit Code;

Credit Activity has the meaning given by s6(1) of the National Credit Act;

Credit Contract has the meaning given by s4 and s5(1) of the National Credit Code;

Credit Provider has the meaning given by s204 of the National Credit Code;

Document includes:

- a) any paper or other material on which there is writing;
- b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and

- c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

National Credit Act means the *National Consumer Credit Protection Act 2009*;

National Credit Code means the National Credit Code at Schedule 1 of the National Credit Act;

National Credit Regulations means the *National Consumer Credit Protection Regulations 2010*;

Relevant Period means the period between 1 November 2012 and 30 April 2013;

Sale Agreement includes the plural and means the '*Solar Panel Sale & Maintenance Agreement*' and the '*Fixed Term Instalment Sale Agreement*' relating to the sale and installation of a residential solar system entered into by SEL with each Consumer;

Sale of Goods by Instalment has the meaning given by s11(1) of the National Credit Code;

SEL means SEL Absolute Return Fund SA Pty Ltd (ACN 090 593 310);

SEL (Holding Company) means SEL Absolute Return Fund Pty Ltd (090 251 666);

Sendy means Andrew John Sendy born 31 October 1972, at Adelaide SA;

Solar Wholesalers means the business name SEL trades under;

Undertaking means this enforceable undertaking; and

Website means SEL's website at www.solarwholesalers.com.au.

2. BACKGROUND

2.1. ASIC's Role

- (a) Under s239 of the National Credit Act, ASIC has the general administration of the National Credit Act.

2.2. Details of Conduct

- (a) SEL's registered office is 53 Wattlebury Road, Lower Mitcham, South Australia, 5062 and its principal place of business is 11 Light Crescent Mount Barker, South Australia, 5251.
- (b) Sendy is the sole director of SEL.

- (c) SEL is wholly owned by SEL (Holding Company).
- (d) During the Relevant Period, Sendy, SEL (Holding Company) and SEL did not hold an ACL.
- (e) SEL operates a business called Solar Wholesalers which sells and installs domestic and commercial solar power systems that are advertised on the Website.
- (f) During the Relevant Period, SEL advertised on its Website that it was able to provide solar systems to residential consumers on payment or leasing plans involving monthly instalment payments.
- (g) During the Relevant Period, SEL entered into 7 separate Sale Agreements.
- (h) In ASIC's view under each Sale Agreement:
 - i. the Consumer had an obligation to purchase the solar system;
 - ii. the amount owed by the Consumer to SEL was deferred;
 - iii. the Consumer was required to make monthly instalment payments over the term of the Sale Agreement;
 - iv. SEL provided credit to the Consumer;
 - v. SEL received the instalments paid; and
 - vi. the Consumer paid an amount in excess of the cash price for the solar system.
- (i) In ASIC's view each Sale Agreement is regarded as:
 - i. a Sale of Goods by Instalment; and
 - ii. a Credit Contract.
- (j) In ASIC's view by engaging in each of the Sale Agreements, SEL is regarded as:
 - i. providing Credit;
 - ii. being a Credit Provider; and
 - iii. engaging in Credit Activity.

2.3. ASIC's Investigation

- (a) On 19 June 2013 ASIC commenced an investigation pursuant to s247 of the National Credit Act into suspected contraventions by SEL of the National Credit Act and the National Credit Code (**the Investigation**).

2.4. ASIC's Concerns

- (a) As a result of the Investigation, ASIC is concerned that:
- i. SEL contravened s29 of the National Credit Act by engaging in **Credit Activity without holding an ACL;**
www.solar-estimate.org/?page=solar-calculator
 - ii. SEL contravened s30(2) of the National Credit Act by advertising that it engages in or is able to engage in Credit Activity, when in so doing SEL would contravene s29;
 - iii. SEL contravened s32 of the National Credit Act by demanding, receiving or accepting any fee, charge or some other amount from the Consumers for engaging in the Credit Activity, where that activity contravened s29;
 - iv. notwithstanding that SEL entered into the Sale Agreements without an ACL, SEL also contravened:
 1. section 16 of the National Credit Code by failing to provide the Consumers with a pre-contractual statement setting out the matters required by s17 and an information statement; and/or
 2. section 17 of the National Credit Code by failing to ensure that the Sale Agreements contained the matters required under s17.

2.5. Acknowledgement of Concerns

SEL acknowledges ASIC's concerns and that those concerns are reasonably held.

3. UNDERTAKINGS

Under s322(1) of the National Credit Act, SEL has offered, and ASIC has agreed to accept as an alternative to commencing civil proceedings, the following Undertakings:

3.1 Changes to the Website

- (a) SEL will ensure from the Commencement Date that there will be no reference to the following on its Website:
- i. Sale Agreements;
 - ii. solar finance options; and
 - iii. solar lease options;

for natural persons or strata corporations, as defined in the National Credit Code.

- (b) SEL will not include on its Website references to the items referred to in paragraphs 3.1(a)(i) to 3.1(a)(iii) unless it is authorised to do so.

3.2 Cancellation of Sale Agreements

SEL will ensure that on the Commencement Date all current Sale Agreements are cancelled in their current terms and vary the terms of the Sale Agreements as set out at paragraph 3.3 below.

3.3 Refunding Existing Customers

- (a) SEL will within 28 days of the Commencement Date contact each Consumer and offer to:
 - i. reduce the total amount payable under the Sale Agreement to an amount equal to the cash price of the solar system purchased at the time the agreement was entered into (**the Reduced Price**); and
 - ii. continue to allow the Consumer to pay the Reduced Price by instalments.
- (b) Where the Consumer has paid out his, her or their Sale Agreement, SEL will ensure that within 30 days of the Commencement Date, the Consumer has been refunded the difference between the total amount paid under the Sale Agreement and the Reduced Price.

3.4 Refraining from Credit Activity

- (a) On and from the Commencement Date, unless authorised to do so, SEL:
 - i. will not enter into any further Sale Agreements;
 - ii. will not enter into any other agreement with residential consumers which might constitute a Credit Contract; and
 - iii. will not engage in Credit Activity.

3.5 Employee Training

SEL will by no later than 60 days following the Commencement Date engage a suitably qualified organisation to provide training to its and/or Solar Wholesalers' employees, directors and officers (**the Employees and Officers**) on compliance with the National Credit Act, National Credit Regulations and National Credit Code.

3.6 Reviewing of Internal Policies

- (a) To ensure future compliance with the National Credit Act, National Credit Regulations and National Credit Code, SEL will, by no later than:
 - i. 60 days following the Commencement Date, review (**the Review**):
 - 1) its residential consumer sale contracts;
 - 2) its internal policies for approving residential consumer sale contracts; and
 - 3) its internal policies and controls relating to the content of its Website.
 - ii. 90 days following the Commencement Date, develop and implement any amendments, procedures and/or protocols identified in the Review.

3.7 Costs

- (a) SEL undertakes that:
 - i. it will pay the costs of its compliance with this Undertaking; and
 - ii. it will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on its costs of compliance with this Undertaking or any proportion of those costs to the Consumers.

3.8 Reporting to ASIC

- (a) Within 120 days of the Commencement Date SEL will provide to ASIC a report containing the following information:
 - i. the precise and complete arrangements made between SEL and the Consumers with regard to the Sale Agreements;
 - ii. details of the training provided to the Employees and Officers; and
 - iii. the procedures and protocols implemented by SEL to ensure future compliance with the National Credit Act, National Credit Regulations and National Credit Code.
- (b) SEL will provide all documents and information requested by ASIC from time to time for the purpose of assessing SEL's compliance with the terms of this Undertaking.

3.9 SEL Undertakes to Act in Good Faith

- (a) SEL will do all acts reasonably necessary to ensure compliance with this Undertaking and refrain from doing any acts which are inconsistent with the terms and objectives of this Undertaking.
- (b) SEL, to the extent possible, will take all practicable steps to ensure that its subsidiaries, associates, related parties, contractors and/or Employees and Officers, act consistently within the terms and objectives of this Undertaking.
- (c) Without limiting the generality of the previous paragraph, a reference to acts which are inconsistent with the terms and objectives of this Undertaking includes publishing or making any statement which is derogatory of, denigrates or trivialises the terms, objectives or any other aspect of this Undertaking.

4. ACKNOWLEDGMENTS

4.1 SEL 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.

4.2 SEL acknowledges:

- (a) that 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 the background section of this Undertaking or arising from future conduct; and
- (b) that 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.
- (c) ASIC's concerns as outlined in paragraph 2.4 above, and has offered Undertakings in the terms outlined in paragraph 3 above.
- (d) that this Undertaking has no operative force until accepted by ASIC, and SEL acknowledges that the date of the Undertaking is the date on which it is accepted by ASIC.

5. NOTIFICATION

5.1 The address for providing ASIC with any document or notification required by the Undertaking is:

The Senior Manager
Financial Services Enforcement
Australian Securities and Investments Commission
GPO Box 9827
Adelaide SA 5001

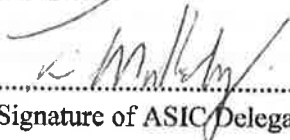
5.2 The address for providing SEL with any document or notification required by the Undertaking is:

Andrew Sendy
Director
SEL Absolute Return Fund SA Pty Ltd
53 Wattlebury Road
Lower Mitcham SA 5062

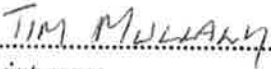
**EXECUTED BY SEL ABSOLUTE
RETURN FUND SA PTY LTD (ACN
090 593 310) in accordance with
s127(1) the Corporations Act 2001 by:**



.....
Signature of Sole Director
Andrew John Sendy

**Accepted by the Australian Securities and Investments Commission under s322(1)
of the National Consumer Credit Protection Act 2009 by its duly authorised
delegate:**


.....
Signature of ASIC Delegate

Delegate of Australian Securities and Investments Commission


.....
Print name


.....
Date