



P00429406

ENFORCEABLE UNDERTAKING

National Consumer Credit Protection Act 2009

Section 322(1)

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this Enforceable Undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

PAID INTERNATIONAL LIMITED (ACN 137 044 949)

**(formerly named FIRST STOP MONEY LTD
and FIRST STOP MONEY PTY LTD)**

1. DEFINITIONS

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

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

Corporations Act means the *Corporations Act 2001* (Cth).

EFT means electronic funds transfer.

Flexicash means Flexicash Pty Ltd (ACN 157 761 932).

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

National Credit Code means the National Credit Code contained in Schedule 1 to the National Credit Act.

National Credit Regulations means the *National Consumer Credit Protection Regulations 2010* (Cth).

PAID means Paid International Limited (ACN 137 044 949), formerly named First Stop Money Ltd and First Stop Money Pty Ltd.

Relevant Period means the period from 1 July 2011 to 30 June 2013.

Websites means the following internet websites operated by PAID during the Relevant Period:

- (a) www.firststopmoney.com.au;
- (b) www.cashtrain.com.au;
- (c) www.loanspronto.com.au;
- (d) www.payday2day.com.au;

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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 National Credit Act which regulates consumer credit in Australia.

Details of Conduct during the Relevant Period

(i) EFT Fee

- 2.3 PAID is a licenced credit provider engaged in a business that includes providing loans of up to \$5,000 to consumers across Australia.
- 2.4 During the Relevant Period, PAID charged consumers in New South Wales (NSW) and the Australian Capital Territory (ACT) a fee to send them their loan monies by electronic funds transfer (EFT Fee).
- 2.5 From 1 July 2011 to 30 June 2012, the EFT Fee was \$44.55 and the amount payable by PAID to its financial institution for the EFT was \$0.14.
- 2.6 From 1 July 2012 to 30 June 2013, the EFT Fee was either \$49.50 or \$59.50 and the amount payable by PAID to its financial institution for the EFT was an amount of not more than \$3.12.
- 2.7 The EFT Fee was added to the loan principal as an additional amount owing to PAID.
- 2.8 During the Relevant Period, PAID did not include the EFT Fees in its calculation of the annual percentage rates imposed by the relevant credit contracts.
- 2.9 During the Relevant Period, PAID collected EFT Fees totalling \$1,128,142 from 6,650 consumers in relation to 20,273 credit contracts.
- 2.10 From time to time during the period from 1 July 2012 to 30 June 2013, PAID represented to consumers that:
 - 2.10.1 laws in NSW and ACT prevented PAID from covering the cost of an EFT to the consumer; and
 - 2.10.2 if the consumer lived in NSW or ACT and chose a same day EFT, the EFT would be arranged by Flexicash.
- 2.11 These representations were made by PAID, in the case of the representation in paragraph 2.10.1, via its Websites and in the case of the representation in paragraph 2.10.2, via three of its Websites and credit contracts.

(ii) Responsible lending

2.12 During the Relevant Period, PAID from time to time entered into credit contracts in circumstances where it failed to:

- 2.12.1 make reasonable inquiries about a consumer's requirements and objectives in relation to the credit contract;
- 2.12.2 make reasonable inquiries about a consumer's financial situation;
- 2.12.3 take reasonable steps to verify a consumer's financial situation;
- 2.12.4 assess the suitability of credit contracts within 90 days before entering into the credit contract or increasing the credit limit of a credit contract; and
- 2.12.5 document the matters in paragraphs 2.12.1 to 2.12.4 above.

(ii) Credit contracts and comparison rates

2.13 During the Relevant Period, PAID from time to time entered into credit contracts in circumstances where the credit contracts:

- 2.13.1 specified incorrectly the amount of credit to be provided;
- 2.13.2 specified an incorrect annual percentage rate;
- 2.13.3 specified incorrectly the total interest charges payable;
- 2.13.4 specified incorrectly the total fees and charges payable;
- 2.13.5 contained a disclosure page that did not substantially comply with the form required by the National Credit Regulations; and
- 2.13.6 contained financial tables which did not (as required by the National Credit Regulations) include all retained fees and charges (being credit fees and charges retained by PAID and not passed on to or retained in reimbursement of an amount paid to a third party).

2.14 During the Relevant Period, PAID's Websites displayed comparison rates which were not calculated in accordance with the requirements of the National Credit Regulations.

3. ASIC'S CONCERNS

Unlawful Passing on of Fees and Charges

3.1 ASIC is concerned that by charging its consumers an EFT Fee which exceeded the amounts payable by PAID to its financial institution for effecting the EFT, as described in paragraphs 2.5 and 2.6, PAID contravened section 32 of the National Credit Code.

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False or Misleading Representations

3.2 ASIC is concerned that by making the representations in paragraph 2.10 in circumstances where:

3.2.1 there were no laws in NSW or ACT which prevented PAID from covering the cost of an EFT for the consumers; and

3.2.2 PAID, not Flexicash, arranged the same day EFT when this was chosen by NSW and ACT consumers;

PAID:

3.2.3 has engaged in conduct in relation to financial services that was misleading or deceptive in contravention of section 12DA of the ASIC Act; and

3.2.4 has given information (via its websites and credit contracts) to consumers in circumstances where it knew, or had constructive knowledge that, the information was false or materially misleading in contravention of section 33, and subsequently section 160D, of the National Credit Act.

3.3 ASIC is also concerned, having regard to the matters set out in paragraph 3.2, that PAID may not have adequate policies, processes and procedures in place to ensure that its advertising practices comply with the:

3.3.1 requirements of the National Credit Act and the ASIC Act; and

3.3.2 best practice guidance contained in Regulatory Guide 234 - Advertising financial products and services (including credit): Good practice guidance.

Responsible Lending

3.4 ASIC is concerned that PAID contravened sections 128 and 130 of the National Credit Act on each occasion that it entered into a credit contract in the circumstances described in paragraph 2.12, namely without:

3.4.1 making reasonable inquiries about a consumer's requirements and objectives;

3.4.2 making reasonable inquiries about a consumer's financial situation;

3.4.3 taking reasonable steps to verify a consumer's financial situation; and/or

3.4.4 assessing the suitability of credit contracts within 90 days before entering into the credit contract or increasing the credit limit of a credit contract.

Defects in Disclosure, Credit Contracts and Comparison Rates

- 3.5 ASIC is concerned that PAID contravened section 17 of the National Credit Code (matters required in contract document) on each occasion that it entered into a credit contract in the circumstances described in paragraphs 2.13.1 – 2.13.5, namely where PAID:
- 3.5.1 specified incorrectly the amount of credit loaned;
 - 3.5.2 specified an incorrect annual percentage rate;
 - 3.5.3 specified incorrectly the total interest charges payable;
 - 3.5.4 specified incorrectly the total fees and charges payable; and/or
 - 3.5.5 contained a disclosure page that did not substantially comply with the form required by the National Credit Regulations.
- 3.6 ASIC is concerned that PAID contravened section 16 of the National Credit Code (precontractual disclosure) on each occasion that it entered into a credit contract that contained financial tables which omitted retained credit fees and charges, as set out in paragraph 2.13.6.
- 3.7 ASIC is concerned that PAID contravened section 160 of the National Credit Code (comparison rate mandatory in advertisements containing annual percentage rate) by displaying the incorrect comparison rate on its Websites during the Relevant Period, as set out in paragraph 2.14.

Failure to Comply with General Obligations

- 3.8 ASIC is concerned that for credit contracts where an EFT Fee was charged:
- 3.8.1 PAID failed, as set out in paragraph 2.8, to include the EFT Fee in its calculation of annual percentage rates, as required by Clauses 4 and 5 of Schedule 3 to the Credit (Commonwealth Powers) Act 2010 No 6 (NSW) and as required by section 63 of the Fair Trading (Australian Consumer Law) Act 1992 (ACT) when read together with section 3 of the Fair Trading Regulation 2009 (ACT);
 - 3.8.2 the annual percentage rate imposed by PAID in its credit contracts (once the EFT Fee was taken into account) exceeded the maximum allowable rate permitted by the Credit (Commonwealth Powers) Act 2010 (No 6) (NSW) or Fair Trading Act 1992 (ACT) and Fair Trading Regulation 2009 (ACT); and
 - 3.8.3 as a result, PAID contravened section 47(1)(d) of the National Credit Act (obligation on licensees to comply with credit legislation).
- 3.9 ASIC is concerned that during the Relevant Period PAID also contravened section 47(1)(d) of the National Credit Act (obligation on licensees to comply with credit legislation) by reason of the concerns in paragraphs 3.1 - 3.2 and 3.4 - 3.8 above to the effect that PAID contravened:

- 3.9.1 the National Credit Act and the National Credit Code (see concerns detailed in paragraphs 3.1 - 3.2 and 3.4 - 3.7);
 - 3.9.2 section 12DA of the ASIC Act (see concerns detailed in paragraph 3.2); and
 - 3.9.3 other State or Territory legislation which regulates credit activities (see concerns detailed in paragraph 3.8).
- 3.10 ASIC is concerned that during the Relevant Period PAID contravened section 47(1)(a) of the National Credit Act by reason of it failing to ensure that the credit activities authorised by its credit licence were engaged in honestly and fairly (see concerns detailed in paragraphs 3.1 - 3.2 and 3.4).

Acknowledgements

- 3.11 PAID acknowledges ASIC's concerns set out in paragraphs 3.1 to 3.10, that those concerns are reasonably held and to address those concerns.
- 3.12 PAID has offered undertakings in the terms of paragraphs 4.2 to 4.17.
- 3.13 ASIC acknowledges that PAID has worked constructively with ASIC to resolve ASIC's concerns.

4. ENFORCEABLE UNDERTAKINGS

- 4.1 Under section 322(1) of the National Credit Act and section 93AA of the ASIC Act:
 - 4.1.1 PAID has offered the undertakings in paragraphs 4.2 to 4.16 ; and
 - 4.1.2 ASIC has accepted those undertakings as an alternative to commencing civil proceedings against PAID under the National Credit Act and the ASIC Act.

Undertakings to Refund EFT Fees

- 4.2 By 31 March 2015, and subject to paragraphs 4.3 to 4.4, PAID will pay to each consumer charged an EFT Fee the total amount of all EFT Fees charged to the consumer (**EFT Refund**) by:
 - 4.2.1 paying the EFT Refund into the consumer's last known or nominated bank account;
 - 4.2.2 crediting the EFT Refund (or any part of it) against the outstanding principal, interest or charges of any existing loan owed by the consumer to PAID with the balance (if any) paid into the consumer's last known or nominated bank account or refunded by cheque; and/or
 - 4.2.3 paying the EFT Refund to the consumer by cheque.

- 4.3 PAID will use its best endeavours to ensure that all EFT Refunds are paid to consumers in accordance with paragraph 4.2 as soon as practicable, and in any event, by 10 April 2015.
- 4.4 Where the total amount of EFT Refunds (\$1,128,142) cannot be paid to consumers in accordance with paragraph 4.2, PAID will on 10 April 2015 pay, without deduction, the difference between the total amount of the EFT Refunds and the total amount of EFT Refunds paid to consumers in accordance with paragraph 4.2 to Financial Counselling Australia, for the purpose of funding financial literacy programs and research in Australia.

Independent review of compliance with this Enforceable Undertaking and Statutory Obligations

- 4.5 Within 30 days of acceptance of this Enforceable Undertaking by ASIC, or such further time as is agreed to by ASIC in writing, PAID will engage an independent consultant (**Consultant**) approved by ASIC and on terms approved by ASIC, to:
- 4.5.1 conduct a review of, and provide written reports (Compliance Report(s)) to PAID and ASIC concerning the matters referred to in paragraph 4.9; and
 - 4.5.2 conduct a review of, and provide a written report to PAID and ASIC (**Refund Report**) concerning the matters referred to in paragraph 4.10.
- 4.6 PAID will not vary the terms of engagement for the Consultant without the prior written approval of ASIC. In the event the Consultant is no longer able to act or meet the requirements agreed upon in this Enforceable Undertaking in relation to the Compliance Reports or the Refund Report, PAID may engage an alternative independent consultant as approved by ASIC and on terms approved by ASIC.
- 4.7 PAID will engage the Consultant to prepare:
- 4.7.1 Compliance Reports for the following periods (each a Review Period) with each Compliance Report to be completed and provided to PAID and ASIC within 30 days of the end of a Review Period, unless otherwise agreed by ASIC in writing:
 - 4.7.2 1 January 2015 to 28 February 2015 (**First Review**);
 - 4.7.3 1 April 2015 to 31 May 2015 (**Second Review**); and
 - 4.7.4 a Refund Report to be completed and provided to PAID and ASIC by 30 April 2015.
- 4.8 Within 21 days of receiving a Compliance Report, PAID will submit a report to ASIC (**Recommendation Report**):

- 4.8.1 certifying which of the recommendations made by the Consultant in any of the Compliance Reports to date have been implemented; and
 - 4.8.2 providing a timetable for the prompt implementation of any recommendations in the Compliance Reports which have, at the date of the Recommendation Report, not been implemented.
- 4.9 PAID's terms of engagement with the Consultant will require the Consultant to review and make recommendations in each Review Period in relation to:
- 4.9.1 PAID's policies and procedures (existing at the time of the review) to ensure PAID complies with the general conduct obligations under section 47 of the National Credit Act;
 - 4.9.2 PAID's policies and procedures (existing at the time of the review) to ensure that PAID's advertising activities (including its websites) comply with section 33 of the National Credit Act, Part 2 Division 2 of the ASIC Act and Regulatory Guide 234 - Advertising financial products and services (including credit): Good practice guidance;
 - 4.9.3 measures taken and to be taken by PAID (existing at the time of the review) to embed the policies and procedures referred to in paragraphs 4.9.1 and 4.9.2 within its organisation and to ensure compliance by staff with those policies and procedures;
 - 4.9.4 advertising material (including websites), in use by PAID at the time of the review, to ensure it does not contain material which may be misleading or deceptive or likely to mislead or deceive; and
 - 4.9.5 PAID's compliance with:
 - 4.9.5.1 the responsible lending obligations under Chapter 3 of the National Credit Act;
 - 4.9.5.2 the requirements imposed by the National Credit Code and the National Credit Regulations in respect of the credit contracts being used by PAID; and
 - 4.9.5.3 the prohibitions on misleading or deceptive conduct in Part 2 Division 2 of the ASIC Act and section 33 of the National Credit Act insofar as PAID's credit contracts are concerned.
 - 4.9.6 For this purpose the Consultant will, for each Compliance Report, review 50 client files in respect of consumers whose loan applications were approved in the corresponding Review Period.
- 4.10 PAID's terms of engagement with the Consultant will require the Consultant to review and report in the Refund Report on:
- 4.10.1 the amount of monies refunded to consumers' bank accounts in accordance with paragraph 4.2.1;

- 4.10.2 the amount of monies credited against consumer loans in accordance with paragraph 4.2.2;
 - 4.10.3 the amount of monies paid to consumers by cheque in accordance with paragraph 4.2.3;
 - 4.10.4 the amount of monies paid to Financial Counselling Australia in accordance with paragraph 4.4; and
 - 4.10.5 whether the total amount refunded to consumers and paid to Financial Counselling Australia was less than the total EFT fees charged to consumers.
- 4.11 PAID's terms of engagement with the Consultant will require the Consultant to include in each Compliance Report details of:
- 4.11.1 the methods used in the review undertaken by the Consultant;
 - 4.11.2 the dates that the Consultant carried out its review;
 - 4.11.3 the Consultant's findings in respect of each of the matters referred to in paragraph 4.9;
 - 4.11.4 any instances identified by the Consultant where PAID may have:
 - 4.11.4.1 failed to make an assessment required by section 128 of the National Credit Act within 90 days of entering into a credit contract;
 - 4.11.4.2 failed to make the inquiries required by section 130 of the National Credit Act in respect of a consumer;
 - 4.11.4.3 entered into an unsuitable credit contract with a consumer contrary to section 133 of the National Credit Act;
 - 4.11.4.4 entered into a credit contract which does not comply with the requirements of the National Credit Code and the National Credit Regulations; and/or
 - 4.11.4.5 engaged in conduct which may have been misleading or deceptive or likely to mislead or deceive;
 - 4.11.5 any recommendations made by the Consultant to PAID; and
 - 4.11.6 for the Second Review, the Consultant's assessment as to whether any recommendation previously made by the Consultant has been implemented effectively.
- 4.12 PAID's terms of engagement with the Consultant will require the Consultant to include in the Refund Report details of:
- 4.12.1 the methods used in the review undertaken by the Consultant;
 - 4.12.2 the dates that the Consultant carried out its review; and

- 4.12.3 the Consultant's findings in respect of each of the matters referred to in paragraph 4.10.
- 4.13 PAID will do all things reasonably necessary to enable the Consultant to conduct the reviews and prepare each Compliance Report and the Refund Report.
- 4.14 The Refund Report, Compliance Reports and Recommendation Reports must be provided to ASIC at the following address:

Senior Manager, Deposit Takers, Credit & Insurers
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000.

General

- 4.15 PAID will pay the costs of their compliance with this Enforceable Undertaking, including all remuneration and costs associated with the Consultant.
- 4.16 PAID will provide all documents and information requested by ASIC from time to time for the purpose of assessing compliance with the terms of this Enforceable Undertaking.

5. ACKNOWLEDGEMENTS

- 5.1 PAID acknowledges that ASIC:
- 5.1.1 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;
 - 5.1.2 may from time to time publicly refer to this Enforceable Undertaking; and
 - 5.1.3 will make this Enforceable Undertaking available for public inspection.
- 5.2 PAID acknowledges that in relation to the Refund Report, Compliance Reports and Recommendation Reports, ASIC:
- 5.2.1 may issue a media release referring to the content of the reports;
 - 5.2.2 may from time to time publicly refer to the reports; and
 - 5.2.3 will make available for public inspection a copy of each report, or a statement that refers to the content of each report.
- 5.3 ASIC acknowledges that in relation to paragraph 5.2 it will delete, remove or not refer to any information that:
- 5.3.1 PAID has requested it not to release; and
 - 5.3.2 ASIC is satisfied that PAID's request:

- 5.3.2.1 would or could reasonably be expected to unreasonably affect the business, commercial or financial affairs of PAID and in ASIC's view would be unreasonable to release because the release of the information would or could be expected to unreasonably affect the business, commercial or financial affairs of PAID otherwise than is contemplated by this enforceable undertaking; or
- 5.3.2.2 concerns information that otherwise should not be disclosed because it would be against the public interest to do so; or
- 5.3.2.3 consists of personal information of an individual.

5.4 PAID acknowledges that:

- 5.4.1 to address ASIC's concerns, PAID must comply with all of the requirements of this Enforceable Undertaking;
- 5.4.2 in the event that PAID does not fully comply with the undertakings in paragraphs 4.2 to 4.16, ASIC may take further action in respect of the conduct which is the subject of this Enforceable Undertaking including exercising its powers to investigate and to take administrative, civil or criminal action in relation to any contravention including contraventions arising from the concerns related to the EFT Fee in paragraphs 3.1 to 3.3 and 3.8 to 3.10 above of this Enforceable Undertaking;
- 5.4.3 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 ASIC's concerns in this Enforceable Undertaking or arising from future conduct; and
- 5.4.4 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.

5.5 PAID acknowledges and accepts that this Enforceable Undertaking does not:

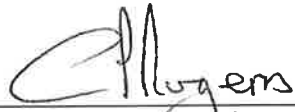
- 5.5.1 limit or derogate from any consumer's right to recover any EFT Fee not refunded under the terms of this Enforceable Undertaking; and
- 5.5.2 nor does it extinguish or limit any consumer's entitlement to damages or compensation for loss incurred in connection with the imposition and collection of the EFT Fees, whether arising under common law or statute.

5.6 PAID acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC, and that the date of the Enforceable Undertaking is the date on which it is accepted by ASIC.

Executed by PAID INTERNATIONAL LIMITED in accordance with section 127(1) of the *Corporations Act 2001* (Cth)

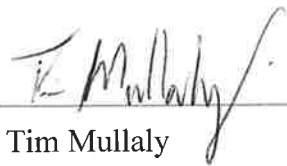


Name: T. K. Ryan
Director: CEO



Name: Christian Patrick Rogers
Director, Secretary

Accepted by the Australian Securities and Investments Commission under section 322 of the National Credit Act and section 93AA of the ASIC Act by its duly authorised delegate:

 15/10/2014

Tim Mullaly
Senior Executive, Enforcement
Delegate of the Australian Securities and Investments Commission
Date: