

**ENFORCEABLE UNDERTAKING**

*National Consumer Credit Protection Act 2009*

Section 322(1)

*Australian Securities and Investments Commission Act 2001*

Section 93AA

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

**AMAZING RENTALS PTY LTD (ACN 128 171 282)**

**1. DEFINITIONS**

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

**Amazing Rentals** means Amazing Rentals Pty Ltd (ACN 128 171 282)

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

**Australian Credit Licence** has the same meaning as defined in s35 of the  
National Credit Act

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

**Credit Legislation** has the meaning given to it by s5 of the National Credit  
Act

**Darwin Store** means the Amazing Rentals store located at Shop 3A, Gray  
Shopping Centre, Gray NT 0830

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

**Queensland Stores** means the two Amazing Rentals stores located at 47  
Russel Street, Toowoomba Qld 4350 and 11/22 Rowe Street, Caboolture Qld  
4510

**Relevant Period** means 8 October 2011 to 5 February 2014

**Retail Value** means the price at which the consumer could have acquired the  
goods at a retail level

## **2. BACKGROUND**

### **ASIC's Role**

- 2.1 Under s1 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**

- 2.3 Amazing Rentals has held Australian Credit Licence number 389312 since 11 February 2011.
- 2.4 Amazing Rentals offers consumer leases of household goods through 3 stores in:
  - 2.4.1 Darwin, Northern Territory;
  - 2.4.2 Toowoomba, Queensland; and
  - 2.4.3 Caboolture, Queensland.
- 2.5 At the Darwin Store, Amazing Rentals regularly deals with consumers who may be considered vulnerable, in that:
  - 2.5.1 the majority of Amazing Rentals' consumer base at the Darwin Store are in receipt of government benefits as their only source of income; and
  - 2.5.2 a number of Amazing Rentals' consumers at the Darwin Store are Indigenous Australians, live in regional or remote locations, have limited access or exposure to other mainstream retail and/or credit services and/or whose first language is not English.
- 2.6 During the Relevant Period, Amazing Rentals entered into consumer leases with consumers at the Darwin Store in circumstances where it failed to:
  - 2.6.1 make reasonable inquiries about the consumer's requirements and objectives in relation to the consumer lease;
  - 2.6.2 make reasonable inquiries about the consumer's financial situation;
  - 2.6.3 take reasonable steps to verify the consumer's financial situation; and
  - 2.6.4 give the consumer Amazing Rentals' credit guide.

- 2.7 During the Relevant Period, Amazing Rentals entered into six consumer leases where those leases were unsuitable for those consumers.
- 2.8 During the Relevant Period, Amazing Rentals entered into consumer leases with vulnerable consumers at the Darwin Store in circumstances where it:
- 2.8.1 did not use an interpreter when speaking to consumers whose first language was not English;
  - 2.8.2 remained silent about important terms of the consumer lease including that consumers were renting the goods and entering into a consumer lease agreement rather than a contract to purchase the goods;
  - 2.8.3 should have been apparent to Amazing Rentals' staff that the consumers did not understand the consumer lease, couldn't read the consumer lease and/or were provided with no opportunity to read the consumer lease; and
  - 2.8.4 required consumers to sign a "customer information acceptance form" confirming statements that the consumer was unlikely to have understood and which may not have been accurate.

### **3. ASIC'S CONCERNS**

#### **Responsible Lending**

- 3.1 ASIC is concerned that during the Relevant Period Amazing Rentals contravened:
- 3.1.1 s151 and s153 of the National Credit Act on each occasion that it entered into a consumer lease in the circumstances described in paragraphs 2.6.1 to 2.6.3;
  - 3.1.2 s149(1) of the National Credit Act on each occasion that it entered into a consumer lease in the circumstances described in paragraph 2.6.4; and
  - 3.1.3 s156(1) of the National Credit Act on each occasion that it entered into a consumer lease in the circumstances described in paragraph 2.7.

#### **Unconscionable Conduct**

- 3.2 ASIC is concerned that, due to the matters set out in paragraphs 2.5 and 2.8, Amazing Rentals may have contravened s12CB of the ASIC Act.

#### **Failure to comply with General Obligations**

- 3.3 ASIC is concerned that during the Relevant Period Amazing Rentals contravened s47(1)(d) of the National Credit Act (obligation on licensees

to comply with credit legislation) by reason of the concerns set out in paragraphs 3.1 to 3.2.

- 3.4 ASIC is concerned that during the Relevant Period Amazing Rentals contravened s47(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 set out in paragraphs 3.1 to 3.2).
- 3.5 ASIC is concerned that during the Relevant Period Amazing Rentals has not kept proper financial records in accordance with s88 and s95 of the National Credit Act in relation to the Darwin Store.
- 3.6 ASIC is further concerned that the matters described in paragraphs 3.1 to 3.5, have not been adequately addressed and /or may have been continuing since 5 February 2014 in relation to the Darwin Store.

#### **Acknowledgements**

- 3.7 Amazing Rentals acknowledges:
  - 3.7.1 ASIC's concerns set out in paragraphs 3.1 to 3.6;
  - 3.7.2 that those concerns are reasonably held; and
  - 3.7.3 that it must comply with all of the requirements of this Enforceable Undertaking in order to address ASIC's concerns.

#### **4. ENFORCEABLE UNDERTAKINGS**

- 4.1 Under s322(1) of the National Credit Act and s93AA of the ASIC Act:
  - 4.1.1 Amazing Rentals has offered the undertakings in paragraphs 4.2 to 4.26; and
  - 4.1.2 ASIC has accepted those undertakings as an alternative to commencing civil proceedings against Amazing Rentals or administrative action in relation to Amazing Rentals' Australian Credit Licence under the National Credit Act and/or the ASIC Act.

#### **Closure of Darwin Store**

- 4.2 Amazing Rentals undertakes on and from the Commencement Date to:
  - 4.2.1 cease entering into any new consumer leases from the Darwin Store;
  - 4.2.2 remove any reference to the Darwin Store from the website [www.amazingrentals.com.au](http://www.amazingrentals.com.au); and

- 4.2.3 only retain business operations from the Darwin Store for so long as is reasonably necessary to facilitate the closure of the Darwin Store.
- 4.3 Amazing Rentals will not recommence operations from the Darwin Store, or commence any new operations from anywhere outside Queensland until:
  - 4.3.1 a period of 12 months from the Commencement Date has passed;
  - 4.3.2 all of the undertakings in paragraphs 4.4 to 4.26 have been complied with; and
  - 4.3.3 all of the recommendations made by the Consultant in the Compliance Reports referred to in paragraphs 4.14 to 4.21 have been implemented.

**Cancellation of Consumer Leases**

- 4.4 Amazing Rentals undertakes to, within 14 days of the Commencement Date, provide to ASIC a list of all consumer leases entered into at the Darwin Store on and from 8 October 2011 (**the Consumer Leases**).
- 4.5 In relation to each of the Consumer Leases, Amazing Rentals undertakes to:
  - 4.5.1 within 14 days of the Commencement Date:
    - a) terminate those Consumer Leases;
    - b) cancel any payment arrangements in relation to those Consumer Leases;
    - c) transfer ownership of the goods the subject of those Consumer Leases to the relevant lessee;
  - 4.5.2 within 30 days of the Commencement Date, advise each of the consumers subject to the Consumer Leases, in terms approved by ASIC, that:
    - a) their consumer lease and payment arrangements in relation to their consumer lease have been cancelled;
    - b) Amazing Rentals transfers ownership of the goods the subject of the consumer lease to the lessee;
    - c) they are under no obligation to continue to make payment in respect of their consumer lease;
    - d) any payments received by Amazing Rentals up to the date which is 14 days from the Commencement Date will be retained by Amazing Rentals;

- e) any payments received by Amazing Rentals after the date which is 14 days from the Commencement Date will be refunded using all reasonable endeavours; and
- f) Amazing Rentals still has obligations under the Australian Consumer Law in relation to the repair or replacement of faulty goods supplied (and a contact number and address for relevant Darwin consumers to contact in case of a fault or complaint must be provided).

4.6 In relation to each of the Consumer Leases:

- 4.6.1 Amazing Rentals is not under any duty to refund any payment that is received by Amazing Rentals for a Consumer Lease after the Commencement Date, but prior to the date on which Amazing Rentals terminates the Consumer Lease pursuant to which the payment was received;
- 4.6.2 Amazing Rentals will refund to the consumer any payments received by it for any of the Consumer Leases after the date which is 14 days from the Commencement Date and will make all reasonable endeavours to refund those amounts to the consumer within 30 days of receiving notification of receipt of the payment.

**Refunds**

- 4.7 Amazing Rentals undertakes to, within 30 days of the Commencement Date, refund to each of the consumers identified in the **Annexure** to this Enforceable Undertaking the difference between the total amount paid by the consumer to Amazing Rentals and the Retail Value of the goods the subject of each of the consumer leases.

**Payment of Lump Sum**

- 4.8 Amazing Rentals undertakes to, within 60 days of the Commencement Date, pay a total of \$10,000; consisting of a payment of \$5,000 to the North Australian Aboriginal Justice Agency and a further \$5,000 to Top End Womens Legal Service for the purpose of funding ongoing civil legal advice and services to Aboriginal consumers in the Northern Territory.

### **New Consumer Leases in Queensland Stores**

- 4.9 Amazing Rentals undertakes to include in all consumer leases entered into from the Commencement Date:
- 4.9.1 the approximate Retail Value of the goods that are the subject of the consumer lease;
  - 4.9.2 the total amount of payments due under the consumer lease; and
  - 4.9.3 the difference between the amounts at 4.9.1 and 4.9.2.

### **Engagement of Consultant**

- 4.10 Amazing Rentals undertakes that within 30 days of the Commencement Date, or such further time as is agreed to by ASIC in writing, Amazing Rentals will engage an independent external compliance consultant (**Consultant**), whose appointment and terms of reference are to be approved by ASIC in writing (such approval not to be unreasonably withheld) to:
- 4.10.1 conduct a review of and, within 90 days of the Commencement Date, provide a written report (**EU Report**) to Amazing Rentals and ASIC concerning the matters referred to in paragraph 4.13; and
  - 4.10.2 conduct a review of and provide written reports (**Compliance Report(s)**) to Amazing Rentals and ASIC concerning the matters referred to in paragraphs 4.15 to 4.17.
- 4.11 Amazing Rentals will not vary the terms of reference for the Consultant without prior written approval of ASIC. If the Consultant is unable to complete the reviews, the EU Report and/or the Compliance Report, Amazing Rentals may engage an alternative independent consultant whose appointment and terms of reference are to be approved by ASIC in writing (such approval not to be unreasonably withheld).

### **Contact Officer**

- 4.12 The contact officer at Amazing Rentals responsible for monitoring compliance with the undertaking and the Consultant will be Sandeep Singh.

### **EU Report**

- 4.13 Amazing Rentals' terms of engagement with the Consultant will require the Consultant to include in the EU Report:
- 4.13.1 the methods used in the review undertaken by the Consultant;
  - 4.13.2 the dates the Consultant carried out the review;

- 4.13.3 the Consultant's findings in respect of Amazing Rentals' compliance with each of the terms in paragraphs 4.2 and 4.4 to 4.9 of this Enforceable Undertaking.

#### **Compliance Reports**

- 4.14 Amazing Rentals will engage the Consultant to prepare Compliance Reports for the following periods (each a Review Period) with each Compliance Report to be completed and provided to Amazing Rentals and ASIC within 30 days of the end of a Review Period, unless otherwise agreed by ASIC in writing:
- 4.14.1 1 June 2015 to 31 July 2015 (**First Review**); and
- 4.14.2 1 October 2015 to 30 November 2015 (**Second Review**).
- 4.15 Amazing Rentals' terms of engagement with the Consultant will require the Consultant to review Amazing Rentals' operations in its Queensland Stores and make recommendations in each Review Period in relation to:
- 4.15.1 Amazing Rentals' policies and procedures (existing at the time of the review) to ensure that Amazing Rentals complies with the general conduct obligations under s47 of the National Credit Act;
- 4.15.2 Measures taken and to be taken by Amazing Rentals (existing at the time of the review) to adopt the policies and procedures referred to in paragraph 4.15.1 within its organisation and to ensure compliance by staff with those policies and procedures, including training provided to staff with a particular emphasis on how they deal with consumers of the kind described in paragraph 4.17;
- 4.15.3 Amazing Rentals' compliance with the responsible lending obligations set out in Chapter 3 of the National Credit Act; and
- 4.15.4 the documentation used by Amazing Rentals including contract documents, quotes, preliminary assessments, credit guides, assessments, and pre-contractual statements and compliance of this documentation with the Credit Legislation.
- 4.16 Amazing Rentals' terms of engagement with the Consultant will require the Consultant to review, for each Review Period, a sample of Amazing Rentals' client files relating to consumer leases, including a sample of files of each corporate credit representative of Amazing Rentals selected at random, including a sample of those living in regional locations (the size and selection of which is to be determined by the Consultant without influence from Amazing Rentals but must be a sample of at least 100 consumer leases).



- 4.17 For the purposes of paragraphs 4.15 and 4.16, Amazing Rentals' terms of engagement with the Consultant will require the Consultant in conducting its reviews to have regard to the adequacy of Amazing Rentals' policies and procedures in their application to vulnerable consumers including:
- 4.17.1 where the consumer lives in a regional or remote location and has limited or no access to their financial records, what steps Amazing Rentals takes to verify the consumer's financial situation and obtain documentary evidence of the same; and
  - 4.17.2 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.
- 4.18 Amazing Rentals' terms of engagement with the Consultant will require the Consultant to include in each Compliance Report details of:
- 4.18.1 the methods used in the review undertaken by the Consultant;
  - 4.18.2 the dates the Consultant carried out the review;
  - 4.18.3 the Consultant's findings in respect of each of the matters referred to in paragraphs 4.15 to 4.17;
  - 4.18.4 the Consultant's assessment of Amazing Rentals' compliance with the Credit Legislation, including but not limited to each of the items specified in paragraph 4.15 to 4.17;
  - 4.18.5 recommendations for any changes to Amazing Rentals' 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
  - 4.18.6 for the Second Review, the Consultant's assessment as to whether any recommendations made by the Consultant have been implemented effectively.
- 4.19 Amazing Rentals will comply with each of the Consultant's recommendations and the time-frame for implementation of each recommendation unless otherwise agreed to in writing by ASIC.
- 4.20 Within 21 days of receiving a Compliance Report, Amazing Rentals will submit a report to ASIC (**Recommendation Report**):
- 4.20.1 certifying which of the recommendations made by the Consultant in any of the Compliance Reports to date have been implemented; and

- 4.20.2 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.
- 4.21 If paragraph 4.20.2 applies Amazing Rentals 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 Consultant**

- 4.22 Amazing Rentals will do all things reasonably necessary to enable the Consultant to conduct the reviews and prepare each Compliance Report and the EU Report, including:
- 4.22.1 giving the Consultant any assistance, information and explanations that the Consultant reasonably requires for the purposes of conducting each review; and
- 4.22.2 permitting the Consultant, subject to any claim of legal professional privilege, to:
- a) have access to Amazing Rentals' books, including consumer files;
  - b) interview Amazing Rentals' employees, contractors and representatives; and
  - c) contact Amazing Rentals' consumers.
- 4.23 Amazing Rentals will 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 4.10, including the selection of contracts and files for the purposes of the reviews specified in paragraph 4.16.

#### **General**

- 4.24 Amazing Rentals will pay the costs of and in connection with its compliance with this Enforceable Undertaking, including all remuneration and costs associated with the Consultant (in accordance with any payment terms imposed by the Consultant) and will not seek reimbursement of, contribution towards, or otherwise directly pass on these costs to its consumers.
- 4.25 Amazing Rentals will provide all documents and information requested by ASIC from time to time for the purpose of assessing Amazing Rentals' compliance with the terms of this Enforceable Undertaking.
- 4.26 The EU Report and the Compliance 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.

## **5. ACKNOWLEDGEMENTS**

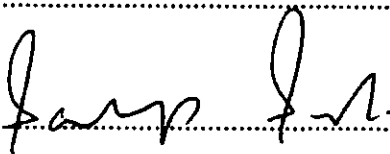
- 5.1 Amazing Rentals acknowledges that ASIC:
  - 5.1.1 may issue a media release on execution of this Enforceable Undertaking referring to its terms and to the concerns of ASIC which led to its execution;
  - 5.1.2 may from time to time publicly refer to this Enforceable Undertaking;
  - 5.1.3 may from time to time publicly report about compliance with this Enforceable Undertaking; and
  - 5.1.4 will make this Enforceable Undertaking available for public inspection.
- 5.2 Amazing Rentals acknowledges that in relation to the EU 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 content of 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 where ASIC considers that the information
  - 5.3.1 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 Amazing Rentals otherwise than is contemplated by this Enforceable Undertaking; or
  - 5.3.2 concerns information that otherwise should not be disclosed because it would be against the public interest to do so; or
  - 5.3.3 consists of personal information of an individual.
- 5.4 Further Amazing Rentals acknowledges that:
  - 5.4.1 to address ASIC's concerns, Amazing Rentals must comply with all of the requirements of this Enforceable Undertaking;
  - 5.4.2 in the event that Amazing Rentals does not fully comply with the undertakings in paragraphs 4.2 to 4.26, 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;

- 5.4.3 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 ASIC's concerns in this Enforceable Undertaking or arising from future conduct;
  - 5.4.4 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 Enforceable Undertaking or arising from future conduct; and
  - 5.4.5 it has continuing obligations pursuant to the Australian Consumer Law including but not limited to obligations arising out of the supply of goods to consumers and the consumer guarantees prescribed by the Australian Consumer Law.
- 5.5 Amazing Rentals and ASIC acknowledge 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.

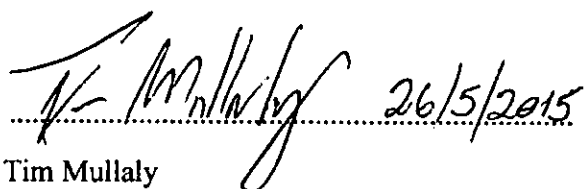
**Executed by AMAZING RENTALS PTY LTD in accordance with section 127(1) of the Corporations Act 2001 (Cth)**

..... Director



..... Director/Company Secretary

Accepted by the Australian Securities and Investments Commission under s322 of the National Credit Act and s93AA of the ASIC Act by its duly authorised delegate:

 26/5/2015

Tim Mullaly

Senior Executive, Enforcement

Delegate of Australian Securities and Investments Commission

Date: 26/5/2015