

ENFORCEABLE UNDERTAKING

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:

Clifford John Sanderson

*of Dissolve Pty Ltd as Trustee for the Dissolve Unit Trust, ABN 14 174 223 792
Level 8, 80 Clarence Street*

SYDNEY NSW 2000

1 Definitions

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

Acceptance Date means the date of Acceptance by ASIC of this enforceable undertaking.

APES 330 means APES 330 Insolvency Services Revised November 2011, effective after 1 April 2012 issued by the Accounting Professional and Ethical Standards Board.

ARITA means the Australian Restructuring Insolvency & Turnaround Association.

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

CALDB means the Companies Auditors and Liquidators Disciplinary Board.

CAANZ means Chartered Accountants Australia and New Zealand.

Code means the Code of Professional Practice for Insolvency Practitioners second edition effective from 1 January 2011.

Company means Nepean Refrigeration and Air Conditioning Pty Ltd ACN 083 222 753 (deregistered).

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

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

Mr Sanderson means Mr Clifford John Sanderson.

Quality Reviewer means the person engaged to undertake the tasks in accordance with paragraph 3.5 of this undertaking.

Reasonably competent liquidator means a registered liquidator acting in accordance with the standards of professional conduct widely accepted in Australia by peer professional opinion as adequately and properly carrying out his/her duties as a liquidator or any duties or functions required by an Australian law to be carried out or performed by a registered liquidator (within the meaning of section 1292(2)(d)(i) of the Act).

- 1.2 Unless otherwise indicated, all references to sections or a Part are respectively references to sections or a Part of the Corporations Act and all references to regulations are references to the Corporations Regulations.

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 Part 9.2 of the Corporations Act charges ASIC with responsibility for registering liquidators and official liquidators and for maintaining a register of liquidators and a register of official liquidators.
- 2.3 ASIC is empowered to bring disciplinary proceedings in the CALDB pursuant to section 1292(2)(d) against a registered liquidator who has failed to carry out or perform adequately and properly:
- (i) the duties of a liquidator; or
 - (ii) any duties or functions required by an Australian law to be carried out or performed by a registered liquidator,
- or is otherwise not a fit and proper person to remain registered as a liquidator.
- In this enforceable undertaking, (i) and (ii) above are collectively referred to as "the duties and functions of a liquidator".
- 2.4 ASIC is also empowered to commence proceedings under section 536 in the Court (as defined in section 58AA).

Details of Mr Sanderson

- 2.5 Mr Sanderson was registered as a liquidator under the Corporations Act on 28 August 1995 and as an official liquidator on 11 December 1997. His registration numbers are 155400 and 174003 respectively.
- 2.6 Mr Sanderson currently practises as a liquidator in the firm Dissolve Pty Ltd as Trustee for the Dissolve Unit Trust ABN 14 174 223 792 of Level 8, 80 Clarence Street, NSW.
- 2.7 Mr Sanderson is a member of CAANZ and ARITA.

Review of Mr Sanderson's conduct

- 2.8 As part of ASIC's Liquidator Compliance Program, ASIC reviewed:
- (a) the conduct of Mr Sanderson as external administrator of Nepean Refrigeration and Air Conditioning Pty Ltd ACN 083 222 753 (deregistered) (the **Company**); and
 - (b) the information provided to ASIC and published on ASIC's public database in respect of the **Company**.

ASIC's views concerning the conduct of Mr Sanderson

- 2.9 As a result of the review referred to in paragraph 2.8, ASIC's view is that Mr Sanderson, in conducting the external administration of the Company, failed to carry out or perform the duties and functions of a liquidator to the standard expected of a reasonably competent liquidator in that he failed to
- (a) in circumstances where the Company's entitlement to any real estate was not disclosed in the director's Report as to Affairs or in the books and records provided to the liquidator, conduct a real property search, noting that if such a search had disclosed any real property owned by the Company, a liquidator would be required to identify, protect, secure or disclaim such property [relevant provisions: sections 180 and 474];
 - (b) undertake adequate investigations as to the Company's assets (including real property, plant & equipment and debtors) and financial circumstances [relevant provisions: sections 180, 181, and 533];
 - (c) prepare adequate documentation as to his assessment of his independence prior to accepting the appointment as external administrator [relevant provisions: section 532 and Code 6.14];
 - (d) make requests of the Company's bookkeeper regarding the Company's financial affairs [relevant provisions: section 530B];
 - (e) undertake an adequate review of voidable transactions, including unfair preferences and uncommercial transactions [relevant provisions: section 533 and Part 5.7B];
 - (f) make a claim against the Company's director for possible insolvent trading despite identifying the existence of the possibility of such a claim which was notified to ASIC and the creditors [relevant provisions: sections 533, 588G and Part 5.7B];
- 2.10 And, otherwise, in relation to sub paragraphs 2.9(c), 2.9(e) and 2.9(f), above, failed to adequately document the work that was undertaken, or failed to adequately document the reasons for not taking the action(s) identified [relevant provisions: section 531, Regulation 5.6.01, Code 18.2 and APES 330 clause 9.2].

Acknowledgement of ASIC's views

- 2.11 Mr Sanderson acknowledges that the views expressed by ASIC in paragraphs 2.9 and 2.10 above are reasonably held and has offered an enforceable undertaking in the terms of paragraphs 3.2 to 3.16 below.
- 2.12 ASIC acknowledges, in respect of the undertakings referred to in paragraphs 3.2 to 3.16 below, that Mr Sanderson has already:

- (a) commenced the review of systems and procedures;
- (b) contacted the reviewer to undertake a peer review; and
- (c) enrolled and paid for the ARITA courses.

3 Undertakings

- 3.1 Under section 93AA of the ASIC Act, Mr Sanderson has offered, and ASIC has agreed to accept, the undertakings set out in paragraphs 3.2 to 3.16 below as an alternative to ASIC making an application in respect of his conduct of the external administration of the Company to CALDB under section 1292(2) or the Court under section 536.

Professional education

- 3.2 Mr Sanderson undertakes to use his best endeavours to maintain his membership of CAANZ and ARITA for a period of not less than 12 months from the Acceptance Date.
- 3.3 Mr Sanderson undertakes to complete:
- (a) sixty (60) hours of Continuing Professional Development (CPD) within 12 months of the Acceptance Date; and
 - (b) of the 60 hours referred to in sub paragraph 3.3(a) above, Mr Sanderson will undertake the ARITA Professional Standards independence, remuneration and reporting courses, together with such further courses as may be necessary to complete a minimum of 20 hours of CPD relating to insolvency practice and practice management; and
 - (c) the remaining CPD hours are to be completed in accordance with the mandatory CPD requirements imposed upon Mr Sanderson because of his membership of CAANZ and/or ARITA.
- 3.4 Mr Sanderson undertakes, as soon as practicable following completion of the CPD referred to in paragraph 3.3 above, to provide ASIC with documents substantiating his completion of that CPD.

Appointment of Quality Reviewer

- 3.5 Mr Sanderson undertakes to, at his own expense, engage a quality reviewer, (**Quality Reviewer**), to conduct two quality reviews and provide two quality review reports, in accordance with this enforceable undertaking. ASIC notes that Mr Sanderson has already complied with this undertaking, as detailed below.
- 3.6 Mr Sanderson has engaged a Quality Reviewer, having advised ASIC in writing of:
- (a) the expertise of the proposed Quality Reviewer; and

- (b) any association between Mr Sanderson and the Quality Reviewer and the Quality Reviewer's staff (if any) during the two (2) year period prior to the Acceptance Date.

3.7 Mr Sanderson engaged the Quality Reviewer in circumstances where:

- (a) the Quality Reviewer has expertise in the proper performance of the duties and functions of a liquidator;
- (b) the Quality Reviewer has been approved by ASIC, in writing, prior to engagement by Mr Sanderson;
- (c) the Quality Reviewer and the Quality Reviewer's staff are, at the time of engagement and at all material times under this enforceable undertaking, independent of Mr Sanderson; and
- (d) the terms of engagement of the Quality Reviewer were approved by ASIC in writing prior to Mr Sanderson agreeing those terms with the Quality Reviewer.

3.8 Mr Sanderson undertakes to provide to the Quality Reviewer for each Quality Review required under this enforceable undertaking, copies of all correspondence that has passed between ASIC and Mr Sanderson which has led to, or is otherwise related to, this enforceable undertaking.

3.9 Mr Sanderson consents to the Quality Reviewer and ASIC discussing, on a confidential basis, matters arising out of ASIC's review of the Company and any correspondence between ASIC and Mr Sanderson which has led to, or is otherwise related to, this enforceable undertaking.

Terms and Timing of the Quality Reviews

3.10 ASIC notes that the terms of engagement of the Quality Reviewer require:

- (a) the First Quality Review to comprise a review of the matters set out in paragraph 3.11 and the Second Quality Review to comprise a review of the matters set out in paragraph 3.12;
- (b) the First Quality Review to include a report in accordance with paragraph 3.13 on the matters set out in paragraph 3.11 and the Second Quality Review to include a report in accordance with paragraph 3.13 on the matters set out in paragraph 3.12;
- (c) the First Quality Review to be finalised and the report in accordance with paragraph 3.13 be provided to ASIC and Mr Sanderson within three (3) months of the Acceptance Date (or such longer period as ASIC approves in writing); and
- (d) the Second Quality Review to be finalised and the report in accordance with paragraph 3.13 be provided to ASIC and Mr Sanderson not less than 10 months, and not more than 13 months,

from the Acceptance Date (or such longer period as ASIC approves in writing).

The Quality Reviews

3.11 The First Quality Review is to review:

- (a) Mr Sanderson's systems and procedures concerning the administration of externally administered companies;
- (b) Mr Sanderson's implementation of those insolvency systems and procedures; and
- (c) whether Mr Sanderson has carried out and performed adequately and properly the duties and functions of a liquidator in one (1) external administration nominated by ASIC by considering each of the following matters:
 - i. independence and disclosure;
 - ii. remuneration and disclosure;
 - iii. reporting to ASIC;
 - iv. reporting to creditors;
 - v. investigations;
 - vi. asset realisations;
 - vii. file documentation; and
 - viii. supervision, systems and procedures.

3.12 The Second Quality Review is to review whether Mr Sanderson has carried out and performed adequately and properly his duties and functions as a liquidator in two (2) external administrations nominated by ASIC, by considering each of the following matters:

- i. independence and disclosure;
- ii. remuneration and disclosure;
- iii. reporting to ASIC;
- iv. reporting to creditors;
- v. investigations;
- vi. asset realisations;
- vii. file documentation; and
- viii. supervision, systems and procedures.

The QR Reports

- 3.13 The terms of engagement of the Quality Reviewer require the Quality Reviewer to produce a report on each Quality Review that:
- (a) contains findings in respect of the matters in paragraphs 3.11 and 3.12 (as applicable) relevant to that Quality Review;
 - (b) describes any suspected breaches of the Corporations Act or Corporations Regulations identified by the Quality Reviewer in conducting each Quality Review; and
 - (c) makes any recommendations thought by the Quality Reviewer to be necessary to ensure that the insolvency systems and procedures utilised by Mr Sanderson are sufficient, and sufficiently implemented, for Mr Sanderson to carry out and perform adequately and properly the duties and functions of a liquidator, including, but not limited to training requirements for Mr Sanderson, and his professional staff (if any).

Responses to QR Reports

- 3.14 Mr Sanderson undertakes, within one month of receiving each QR Report (or such longer period as ASIC approves in writing), to write to ASIC notifying ASIC of the steps taken, or proposed to be taken, to implement any recommendations in that QR Report and, to the extent any recommendation has not or will not be implemented, the reasons why.

Costs and information to ASIC

- 3.15 Mr Sanderson undertakes to pay the costs of his compliance with this enforceable undertaking.
- 3.16 Mr Sanderson undertakes to provide to ASIC all documents and information requested by ASIC from time to time for the purpose of assessing his compliance with the terms of this enforceable undertaking.

4 Acknowledgements

- 4.1 Mr Sanderson acknowledges that ASIC:
- (a) may issue a media release on acceptance 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/or to Mr Sanderson's compliance or non-compliance with this enforceable undertaking;
 - (c) will make this enforceable undertaking available for public inspection, and, in particular, will record the enforceable undertaking on the Register of Enforceable Undertakings maintained by ASIC; and

(d) may include a reference to the enforceable undertaking in particulars that ASIC may consider appropriate to include in ASIC's Register of Liquidators and Register of Official Liquidators that ASIC maintains pursuant to section 1286.

4.2 In relation to the First or Second QR Reports, Mr Sanderson acknowledges that ASIC:

- (a) may issue a media release referring to the content of the Reports;
- (b) may from time to time publicly refer to the Reports; and
- (c) will make available for public inspection a copy of the Reports, or a statement that refers to the content of the Reports.

4.3 ASIC acknowledges that in relation to paragraph 4.2, it will delete, remove or not refer to any information that:

- (a) 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 a company of which Mr Sanderson is or was appointed to as external administrator;
- (b) Mr Sanderson has requested it not to release; and
- (c) ASIC is satisfied:
 - (i) would or could reasonably be expected to unreasonably affect the business, commercial or financial affairs of Mr Sanderson's insolvency practice 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 Mr Sanderson otherwise than is contemplated by this enforceable undertaking; or
 - (ii) otherwise should not be disclosed because it would be against the public interest to do so; or
 - (iii) consists of personal information of an individual.

4.4 Further, Mr Sanderson 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 lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's views set out in 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.

- 4.5 ASIC acknowledges that Mr Sanderson co-operated with ASIC in respect of the review and this enforceable undertaking.
- 4.6 Mr Sanderson acknowledges that this undertaking has no operative force until accepted by ASIC, and Mr Sanderson and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

Signed:



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Clifford John Sanderson

Dated: 14th October 2016

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



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George Stogdale

Delegate of Australian Securities and Investments Commission

Dated: 20 October 2016