

## 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 (ASIC) by:

**Cash Converters Personal Finance Pty Ltd**

**ACN 110 275 762**

and

**Cash Converters International Ltd**

**ACN 069 141 546**

### 1. Definitions

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

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

**Australian Credit Licence** has the same meaning given by section 35 of the National Credit Act.

**Benchmark** means an assumed amount used to account for a consumer's expenses, calculated as a percentage of the consumer's gross income.

**Books** has the same meaning given by section 5 of the National Credit Act.

**CCIL** means Cash Converters International Ltd (ACN 069 141 546).

**CCPF** means Cash Converters Personal Finance Pty Ltd (ACN 110 275 762).

**Commencement Date** means the date this enforceable undertaking is accepted by ASIC.

**Consumer** has the meaning given by subsection 5(1) of the National Credit Act.

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

**Independent Expert** means a person who meets the criteria set out in paragraph 3.9 of this enforceable undertaking.

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

**Permitted establishment fee** has the same meaning given by subsection 31A(2) of the Credit Code.

**Permitted monthly fee** has the meaning given by subsection 31A(1) of the Credit Code.

**Relevant Period** means the period from 1 July 2013 to 1 June 2016 (inclusive).

**SACC** means small amount credit contract and has the same meaning given by subsection 5(1) of the National Credit Act.

**Website means** the website at [www.cashconverters.com.au](http://www.cashconverters.com.au).

## **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**

- 2.3 At all relevant times CCIL has been the ultimate holding company of CCPF. CCPF has held Australian Credit Licence number 391436 since 14 February 2011.
- 2.4 CCIL's core business is comprised of the franchising and ownership of pawnbroking and second-hand dealing retail stores and the provision of credit to consumers across Australia and the United Kingdom both in store and online.
- 2.5 At all relevant times, CCPF advanced primarily unsecured loans to consumers through franchised and CCIL-owned stores, and online by way of the Website. Two types of loan products were offered to consumers both in store and online:
  - 2.5.1 'personal loan' – a credit contract for a term of 12 months for a principal amount ranging from \$400 to \$2,000; and
  - 2.5.2 'cash advance' – a credit contract for a term of 6 weeks for a principal amount ranging from \$50 to \$2,000.
- 2.6 These products are SACCs for the purposes of the National Credit Act, and are subject to the additional verification requirements set out in section 130(1A) for the purpose of performing an assessment of unsuitability as required by section 128(c).
- 2.7 During the Relevant Period CCPF processed not less than 118,000 SACCs applied for via the Website by consumers who, at the time of the assessment of unsuitability or at the time CCPF entered into the SACC,

were debtors under two or more SACCs in the 90-day period before the assessment or before entering into the SACC (**Relevant SACCs**).

- 2.8 It is presumed, by operation of subsections 131(3A) and 133(3A) of the National Credit Act, that those consumers could only comply with their financial obligations under the Relevant SACCs with substantial hardship unless the contrary is proved.
- 2.9 CCPF assessed the Relevant SACCs as suitable and entered into them in reliance, among other things, upon the use of Benchmarks including both for consumers' living expenses and, in some cases, rental expenses.

#### **ASIC's views concerning the conduct**

- 2.10 As a result of ASIC's investigations, ASIC is concerned that CCPF may have contravened provisions of the National Credit Act because, in respect of each Relevant SACC, CCPF:
- 2.10.1 used a Benchmark in circumstances where it also failed to make reasonable inquiries about and take reasonable steps to verify the consumer's financial situation in contravention of s 130(1) of the National Credit Act;
- 2.10.2 entered into the Relevant SACC having used a Benchmark without having undertaken the inquiries and verification required by s 130(1) of the National Credit Act in contravention of s 128 of the National Credit Act;
- 2.10.3 assessed the Relevant SACC as suitable, in contravention of s 131(1) of the National Credit Act, in circumstances where it was presumed by operation of s 131(3A) that the consumer could only comply with their financial obligations under the Relevant SACC with substantial hardship;
- 2.10.4 entered into the Relevant SACC, in contravention of s 133(1) of the National Credit Act, in circumstances where it was presumed by operation of s 133(3A) that the consumer could only comply with their financial obligations under the Relevant SACC with substantial hardship;
- 2.10.5 failed to keep adequate records of all material which formed the basis of the assessment of whether the Relevant SACC was unsuitable, in breach of its Australian Credit Licence conditions; and
- 2.10.6 failed to comply with its general conduct obligations as a licensee in respect of the Relevant SACC, in contravention of s 47 of the National Credit Act.

### **Acknowledgement of ASIC's views and admissions**

- 2.11 While the entry into this enforceable undertaking does not constitute an admission by CCPF of the contraventions identified at paragraph 2.10 above, CCPF:
- 2.11.1 admits the conduct identified in paragraphs 2.7 to 2.9;
  - 2.11.2 acknowledges that ASIC's concerns with respect to the matters identified in paragraph 2.10 are reasonably held; and
  - 2.11.3 acknowledges that it must comply with all of the requirements of this enforceable undertaking in order to address ASIC's concerns.

### **3. Undertakings**

- 3.1 Under s 322(1) of the National Credit Act, CCPF and CCIL have offered, and ASIC has agreed to accept, the undertakings in paragraphs 3.2 to 3.23 below as an alternative to commencing civil penalty proceedings against CCPF, its officers, employees, agents and related entities including CCIL, or an administrative action in relation to CCPF's Australian Credit Licence under the National Credit Act.

#### ***Consumer remediation***

- 3.2 Subject to the terms of this enforceable undertaking, CCPF and CCIL will comply with the process described in paragraph 3.6 to refund to consumers who entered into the Relevant SACCs the amount of AU\$10,800,000.00 (**Remediation Funds**).
- 3.3 The Remediation Funds are to be paid in respect of the following fees paid by consumers:
- 3.3.1 the permitted establishment fee;
  - 3.3.2 any fee or charge payable in default of a payment;
  - 3.3.3 any collection or enforcement fees; and
  - 3.3.4 the permitted monthly fees collected
- (the **Fees**).
- 3.4 The amount to be refunded for each Relevant SACC will be calculated by CCPF and CCIL as follows:
- 3.4.1 calculate the total Fees paid by the consumer;

- 3.4.2 determine (expressed as a percentage) what the amount calculated in 3.4.1 represents of the total Fees collected by CCPF in respect of the Relevant SACCs; and
  - 3.4.3 apply that percentage to the Remediation Funds to determine the amount payable to the consumer.
- 3.5 CCPF and CCIL agree that they will, within 14 days after the Commencement Date, submit to ASIC for approval a communication plan that outlines the communication proposed in paragraph 3.6, the method of communication and when each communication will occur (**Communication Plan**).
- 3.6 To identify, locate and remediate consumers, CCPF will undertake the following:
- 3.6.1 Within six months of the Commencement Date (or within such longer period as may be agreed between ASIC and CCPF) (**Identification Date**), use its best endeavours to:
    - (a) identify consumers entitled to remediation based on CCPF's records and other means;
    - (b) inform them of their remediation entitlement using the wording in the approved Communication Plan; and
    - (c) publish information on the Website's homepage in a prominent position regarding the consumer remediation using the wording in the approved Communication Plan.
  - 3.6.2 Within one month after the Identification Date (**Payment Date**), pay the remediation due to each consumer through electronic funds transfer into their last known bank account or other nominated account.
  - 3.6.3 For consumers whose recorded bank details result in a failed transfer (**Outstanding Consumers**), within one month of the Payment Date, CCPF will attempt to contact each Outstanding Consumer via email if an active email address is recorded, or post to a recorded postal address if an active email address is not recorded, or SMS if an active mobile number is recorded identifying in that correspondence that remediation is owed to the Outstanding Consumer and requesting they provide CCPF with updated bank details.
  - 3.6.4 For Outstanding Consumers who have not provided updated bank details within three months of the Payment Date, CCPF will contact Outstanding Consumers via telephone informing that remediation is owed to the Outstanding Consumer and requesting they provide CCPF with updated bank details.

- 3.6.5 Within one month of receipt of the current bank details of an Outstanding Consumer, CCPF will pay the remediation due to that Outstanding Consumer through electronic funds transfer to the nominated bank account.
- 3.6.6 Following the expiration of one year after the Commencement Date, CCPF will pay any residual balance of the Remediation Funds as directed by ASIC for the purposes of funding one or more of the following:
- (a) financial literacy programs;
  - (b) consumer education; and/or
  - (c) consumer research programs.
- 3.7 CCPF and CCIL each agree that they will be jointly and severally liable to pay the Remediation Funds in accordance with this enforceable undertaking.

***Compliance review by Independent Expert***

***Appointment of Independent Expert***

- 3.8 CCPF undertakes to request ASIC to approve, within 15 business days of the Commencement Date or within such longer period as may be agreed between ASIC and CCPF:
- 3.8.1 the appointment of an Independent Expert; and
  - 3.8.2 terms of engagement for that Independent Expert that meet the requirements of this enforceable undertaking.
- 3.9 CCPF undertakes to nominate, under paragraph 3.8.1 above, an Independent Expert who, in CCPF's opinion:
- 3.9.1 has the necessary expertise, experience and operational capacity to perform the role contemplated by this enforceable undertaking; and
  - 3.9.2 unless otherwise agreed, is independent of CCPF, its related bodies corporate and its officers at the time of the appointment, and who will at all material times be capable of exercising objective and impartial judgment.
- 3.10 If ASIC approves the Independent Expert and the terms of engagement following a request by CCPF under paragraph 3.8 (which approval will not be unreasonably withheld), CCPF undertakes to engage the approved Independent Expert on the terms approved by ASIC, within ten business days of receiving ASIC's approval, or within such longer period as may be agreed between ASIC and CCPF.

Terms of engagement

- 3.11 CCPF undertakes to ensure the terms of the Independent Expert's engagement provided to ASIC for approval under paragraph 3.8.2 include the following:
- 3.11.1 A statement that the work of the Independent Expert is being carried out for CCPF and ASIC.
  - 3.11.2 A statement that upon ASIC's request, ASIC is to be copied into all or some communications between CCPF and the Independent Expert.
  - 3.11.3 A requirement that the Independent Expert notify ASIC if a conflict of interest arises during the engagement or if the Independent Expert becomes aware of information that adversely affects their ability to exercise objective and impartial judgment.
  - 3.11.4 An acknowledgement that, in relation to the written reports to be provided to ASIC and CCPF as described below, ASIC may from time to time publicly refer to the content of the reports, and may make public a summary of the content of the reports or a statement that refers to the content of the reports.
  - 3.11.5 A requirement that the Independent Expert, for the period from the Commencement Date to 6 months thereafter (**First Review Period**) (or such longer period as agreed to by ASIC), provides an interim report (**Interim Compliance Report**) to ASIC within 30 days of the end of the First Review Period detailing:
    - (a) whether CCPF's systems, processes, policies and training procedures are adequate to ensure compliance with:
      - i. its obligations under its Australian Credit Licence;
      - ii. the general conduct obligations under section 47 of the National Credit Act;
      - iii. sections 128, 130, 131 and 133 of the National Credit Act;
      - iv. the provisions in the National Credit Act and Credit Code that apply to SACCs; and
    - (b) that as part of the review of matters in paragraph 3.11.5(a) above, the Independent Expert has reviewed consumer files and internal documents, interviewed relevant staff, and reviewed the Website;
    - (c) a description of the method used for the review and the dates the review was carried out; and

- (d) recommendations for actions that, in the opinion of the Independent Expert, would be necessary for CCPF to implement to rectify the deficiencies identified in the Interim Compliance Report.

3.11.6 A requirement that the Independent Expert provides an interim report (**Interim Remediation Report**) to ASIC within 30 days of the end of the eight month period following their engagement (or such longer period as agreed by ASIC) detailing the remediation paid to consumers in accordance with paragraphs 3.2 to 3.6, specifically noting:

- (a) whether the approved Communication Plan has been implemented;
- (b) whether remediation paid to consumers has been correctly calculated and refunded; and
- (c) the extent to which remediation payments have been made and the extent to which remediation is still to be completed.

3.11.7 A requirement that the Independent Expert, for the period six to 12 months from the Commencement Date (**Second Review Period**) (or such longer period as agreed to by ASIC), provides a final written report (**Final Report**) to CCPF and ASIC within 30 days of the end of the Second Review Period which sets out the Independent Expert's assessment of:

- (a) the matters detailed in paragraph 3.11.5(a) – (c);
- (b) whether CCPF has adequately implemented the recommendations made in the Interim Compliance Report;
- (c) the recommendations for actions that, in the opinion of the Independent Expert, would be necessary for CCPF to implement to rectify deficiencies identified in the Final Report or to finalise recommendations contained in the Interim Compliance Report; and
- (d) in respect of the remediation paid to consumers in accordance with paragraphs 3.2, 3.3, 3.4 and 3.6:
  - (i) whether the process in paragraph 3.6 has been followed; and
  - (ii) whether remediation paid to consumers has been correctly calculated and refunded.

3.11.8 A requirement that the Independent Expert assess whether the recommendations identified in the Final Report have been reasonably implemented four months after the date of the Final Report (or such other date as may be agreed between ASIC and



CCPF) and confirm that all monies have been paid in accordance with paragraph 3.6.6 and provide a report (**Further Report**) on the outcome of such assessment to ASIC and CCPF within 30 days of that assessment.

- 3.12 CCPF undertakes not to vary the terms of the engagement of the Independent Expert without the prior written approval of ASIC.

Implementation of recommendations

- 3.13 Within 30 days (or such later date as agreed between ASIC and CCPF) of receipt of the Interim Compliance Report, CCPF must provide to ASIC a plan to implement the recommendations contained in the Interim Compliance Report (**Interim Compliance Plan**) which:

3.13.1 sets out the actions CCPF proposes to take to implement recommendations identified in the Interim Report;

3.13.2 demonstrates that sufficiently qualified and skilled staff are employed to discharge the Interim Remediation Plan; and

3.13.3 specifies the date by which each action will be completed.

- 3.14 CCPF undertakes to make all reasonable modifications to the Interim Compliance Plan as reasonably required by ASIC within ten business days of receiving the relevant notification.

- 3.15 CCPF undertakes to implement the Interim Compliance Plan in full and within the timeframes specified in the Interim Compliance Plan, or such varied timeframes as are agreed by ASIC.

- 3.16 Within 30 days of receipt of the Final Report (or such later date as agreed between ASIC and CCPF), CCPF must provide to ASIC a plan to implement the recommendations contained in the Final Report (**Final Compliance Plan**) which:

3.16.1 sets out the actions CCPF proposes to take to implement the recommendations identified in the Final Report;

3.16.2 demonstrates that sufficiently qualified and skilled staff are employed to discharge the Final Compliance Plan; and

3.16.3 specifies the date by which each action will be completed.

- 3.17 CCPF undertakes to make all reasonable modifications to the Final Compliance Plan as reasonably required by ASIC within ten business days of receiving the relevant notification.

- 3.18 CCPF undertakes to implement the Final Compliance Plan in full, and within the timeframes specified in the Final Compliance Plan, or such varied timeframes as are agreed by ASIC.

Access to information

- 3.19 CCPF undertakes to:
- 3.19.1 permit the Independent Expert to have access to its Books and to interview current employees to the extent that it is reasonable having regard to the requirements of this enforceable undertaking;
  - 3.19.2 give the Independent Expert any information or explanation reasonably requested of any matter connected with the reports required to be prepared by the Independent Expert under this enforceable undertaking; and
  - 3.19.3 otherwise give reasonable assistance to the Independent Expert in carrying out the terms of their engagement and in producing the reports required under this enforceable undertaking.

Appointment of alternative Independent Expert

- 3.20 CCPF undertakes to seek approval under paragraph 3.8 for the appointment of a new Independent Expert within 15 business days of becoming aware that the appointed Independent Expert is unable to continue its appointment.

***Other matters***

- 3.21 CCPF undertakes that it will pay the costs of its compliance with this enforceable undertaking, including all costs associated with the engagement of the Independent Expert.
- 3.22 CCPF will provide all documents and information requested by ASIC from time to time for the purpose of assessing CCPF's compliance with the terms of this enforceable undertaking.
- 3.23 In addition to any other reports or documents prepared under this enforceable undertaking, CCPF and CCIL undertake to provide to ASIC, within 30 days of implementation of the Final Compliance Plan under paragraph 3.18, a statement about whether the undertakings in paragraphs 3.2 to 3.22 have been complied with.

#### 4. Acknowledgements

##### 4.1 CCPF and CCIL acknowledge that ASIC:

- 4.1.1 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;
- 4.1.2 may from time to time publicly refer to and comment on this enforceable undertaking;
- 4.1.3 may from time to time publicly report about CCPF's compliance with this enforceable undertaking;
- 4.1.4 will make this enforceable undertaking available for public inspection;
- 4.1.5 may issue a media release referring to, or otherwise publicly refer to and comment on, the content of the Interim Report, Final Report and Further Report; and
- 4.1.6 may make available for public inspection a summary of the contents of the Interim Report, Final Report and/or Further Report, or a statement that refers to the content of those reports.

##### 4.2 ASIC acknowledges that it will:

- 4.2.1 not refer to any information in a report of the Independent Expert that:
  - (a) consists of personal information of an individual;
  - (b) ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of CCPF or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking; or
  - (c) ASIC is satisfied should not be released because it would be against the public interest to do so; and
- 4.2.2 provide CCPF and CCIL with no less than 24 hours' written notice prior to making available any document in accordance with paragraphs 4.1.5 and 4.1.6.

##### 4.3 Further CCPF and CCIL acknowledge that:

- 4.3.1 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 release between ASIC, CCIL and CCPF executed on or about the date of acceptance of this enforceable undertaking or arising from future conduct; and

4.3.2 this enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity, including consumers receiving the benefit of remediation paid in accordance with paragraphs 3.2 to 3.6, arising from any conduct described in this undertaking or arising from future conduct.

4.4 CCPF and CCIL acknowledge that this undertaking has no operative force until accepted by ASIC, and CCPF, CCIL and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

THE COMMON SEAL of )  
Cash Converters Personal Finance Pty Ltd )  
ACN 110 275 762 was affixed in accordance )  
with the *Corporations Act 2001* (Cth) in the )  
presence of:



Director  
**Peter Cumins**  
Managing Director



Director/Company Secretary  
**Derek Ralph Groom**  
Company Secretary

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Director  
**Peter Cumins**  
Managing Director



Director/Company Secretary  
**Derek Ralph Groom**  
Company Secretary

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



.....  
David McGuinness  
Senior Executive, Enforcement  
Delegate of Australian Securities and Investments Commission

**Date:** 4 NOVEMBER 2016  
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