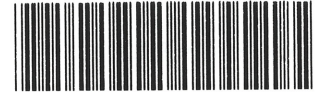




ASIC

Australian Securities & Investments Commission



S02539146

## INFRINGEMENT NOTICE

### Section 12GXA of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 20 September 2018

Unique identification code: R20180001137901

TO: Metricon Homes Pty Ltd  
ACN 005 108 752  
501 Blackburn Road  
MOUNT WAVERLEY VIC 3149

1. ASIC issues this infringement notice under section 12GXA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).
2. ASIC has reasonable grounds to believe that on 8 January 2018 Metricon Homes Pty Ltd (ACN 005 108 752) (**Metricon**) contravened section 12DB(1)(i) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services, making false or misleading representations concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including an implied warranty under section 12ED).

#### Particulars

Metricon represented in an advertisement (the **Advertisement**) broadcast on three regional Victorian radio stations – 103.1 Power FM (Ballarat), 94.3 Star FM / Hit FM (Traralgon / Warragul) and 99.5/99.5 TRFM (Sale / Traralgon) – that a consumer could obtain a Metricon house and land package, through its ‘HomeSolution’ package, if they provided \$2,000 and qualified for the first home owner grant (the **Representation**).

ASIC has reasonable grounds to believe that the Representation was misleading because it gave consumers the incorrect impression that they could obtain a Metricon house and land package if they provided \$2,000 and qualified for the first home owner grant. In truth, consumers were required to satisfy additional conditions in order to obtain a house and land package, namely to:

- (a) qualify for a home loan;
- (b) fund the balance of a 5% deposit required for the home loan through a personal loan; and
- (c) qualify for the Home Saver Program provided by Phoenix Mortgage Management Pty Ltd.

#### **Penalty under this notice**

3. The penalty payable under this notice in relation to the alleged contravention is \$12,600.

4. This penalty is payable to ASIC on behalf of the Commonwealth.
5. This penalty can be paid using one of the methods detailed in the enclosed invoice.

#### **Consequences of complying with this notice**

6. If you pay the penalty stated in this notice within the time for payment stated below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
  - (a) no proceedings (whether criminal or civil) will be brought against you by the Commonwealth or ASIC for the conduct the subject of the alleged contravention of the infringement notice provision as set out in paragraph 2 above or an offence constituted by the same conduct; and
  - (b) you will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

#### **Consequences of failing to comply with this notice**

7. If you do not pay the penalty specified in this notice within the time for payment stated below, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings against you under Subdivision G of Division 2 of Part 2 (the consumer protection provisions) of the ASIC Act (whether criminal or civil) for the conduct the subject of the alleged contravention of the infringement notice provision as set out in paragraph 2 above or an offence constituted by the same conduct.
8. The maximum pecuniary penalty that a court may order you to pay for the alleged contravention is \$2.1 million.

#### **Time for payment**

9. The time for payment is:
  - (a) within 28 days after the day on which the notice is issued to you; or
  - (b) if ASIC extends, by notice in writing the compliance period for this notice, within that further period allowed.

#### **Applying for more time to pay the penalty under this notice**

10. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
11. If you wish to apply for an extension of time to pay the penalty specified in this notice, you should do so in writing within 28 days after the day the notice is issued to you (see paragraph 15).

#### **Applying to have this notice withdrawn**

12. Within 28 days after the day on which this notice is issued, you may apply to ASIC in writing to have this notice withdrawn.
13. Evidence or information that you or your representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against you or your representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

#### **Withdrawal of this notice**

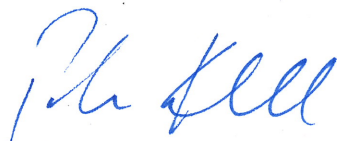
14. ASIC may, by written notice given to you, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not you have applied to have this notice withdrawn.
15. A withdrawal notice must be given to you within the time for payment of this infringement notice to be effective.
16. If the withdrawal notice is given after you have paid the penalty specified in this infringement notice, ASIC will refund to you the amount paid under the infringement notice.

#### **Requirements for applications**

17. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:
  - (a) must be in writing; and
  - (b) must include the unique identification code set out at the top of this notice; and
  - (c) must include your reasons for making the application; and
  - (d) may be made by forwarding your application to ASIC at the address in paragraph 18.
18. You may contact ASIC in relation to this notice by contacting:

**Elissa Le Sauvage**  
**Australian Securities and Investments Commission**  
**GPO Box 9827**  
**MELBOURNE VIC 3000**  
**or by email: [ACLInfringementNotices@asic.gov.au](mailto:ACLInfringementNotices@asic.gov.au)**

Signed:



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Peter Kell  
Deputy Chairman  
as a delegate of the Australian Securities and Investments Commission